

IN THE
United States
Circuit Court
of Appeals

FOR THE NINTH CIRCUIT.

IN THE MATTER
OF

The Application of JOHN DENNETT, JR., ET AL., for a Writ of Mandamus, directed to the HONORABLE WILLIAM H. SAWTELLE, District Judge of the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, and directed to said District Court.

Motion for Leave to file Petition for Writ of Mandamus and for an Order to Show Cause.

WILLIAM M. SEABURY,
Attorney for Petitioners,
Fleming Building,
Phoenix, Arizona.

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IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

IN THE MATTER OF

The Application of JOHN DENNETT, JR.,
J. G. BOGARD, J. J. KEATING, ROSE
BOEHMER, MARY BLEAK, HARRY E.
HARTER, H. S. GRAY, MARY E. ELLS-
WORTH, L. M. GUSTAFSON, A. H. FER-
RIN, LUCY H. PURDUM, H. P. WIGHT-
MAN, A. C. LOCWOOD, ALEX. ANDER-
SON, D. BOHN, ERIT EQUIST, A. H.
OELTJEN, GEORGE S. HUGHES, MRS.
W. J. JACSON, LYSANDER CASSIDY,
RAMON BRENNNA, ROSS H. BLAKELY,
JOHN W. HARRIS, JR., A. C. MARCOM,
FRED W. ALBRIGHT, M. KIRSHWING,
OLAF OLSEN, THEO. HOLTEN and
OLE HOLTEN, HUGO SANDQUIST,
EUGENE SEELEY, JAMES H. EAST,
FRED CADWELL, MARGARET CAD-
WELL, E. B. TINKER, E. L. HOSLER,
S. L. HOSLER, GLENN W. MORSE, B.
G. TANG FONG, A. E. GILLARD, J. C.
WILHELM, FRANK A. MOSS, GEO. K.
ANDERSON, L. D. LACHANCE, GRACE
LANGSTON, FRANK A. FLICKENGER,
CHARLES J. PATTERSON, E. T.
STAEBLER, NETTIE SHELDON, LLOYD
C. HENNING, WILSON PATTERSON, E.
W. CLAYTON, WILLIAM C. FAULKNER,
WALTER W. WILLIAMS, J. N. STRAT-
TON, W. E. PLATT, JOHN F. WEBER,
S. G. IJAMS, IDA N. FRYE, WILLIAM
SOBEY, WILLIAM WHALLEY, O. W.
MILLER, WILLIAM H. WATTS, GLOBE
LUMBER COMPANY, ALFRED HAN-
SEN, CLARA F. BLOOM, nee CLARA
FERRIN, ORVILLE YOUNG, FRED W.
HORN, J. C. BRADLEY, OLIVER MYERS,
J. W. McLEAN, JOSEPH CARPENTER,
JOHN STEIGLER, C. R. FREEMAN, M.
A. RAMERIZ, E. J. BRUNENKANT, C.
BRUNENKANT, THOMAS WEEDIN,
FREDERICK E. WHITE, FREDERICK
E. WHITE, Assignee of AH LEE, SAM
Y. BARKLEY, M. D. LANGLEY, MRS.
J. N. RUSSELL, CORA E. DUNAGAN,
HELEN WEBER, W. E. YOUNG, MRS.
M. L. GRAVES, MRS. W. S. HURST,
MRS. C. S. BROWN, MARIA B.
STEVENS, A. T. KLEINSCHMIDT,
ROSARIO C. BRENA, A. J. DURAGO,
H. CAPIN, L. C. FREDERICO and E. T.
COLLINS, for a Writ of Mandamus di-
rected to the Honorable WILLIAM H.
SAWTELLE, District Judge of the
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA, and
directed to said District Court.

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- 4 Now come the petitioners above named, and each of them, by William M. Seabury, their solicitor, and move for leave to file the petition hereto annexed for a writ of mandamus, and further move that an order be entered and issued directing the Honorable William H. Sawtelle, District Judge of the United States for the District of Arizona, and directing the District Court of the United States for the District of Arizona to show cause, if any there be, why a writ of mandamus should not issue against said judge and court and each of them, in accordance with the prayer of said petition and why said petitioners should not have such other and further relief in the premises
- 5 as may be just and proper.

WILLIAM M. SEABURY,

Attorney for Petitioners.

Fleming Building,

Phoenix, Arizona.

Dated, Phoenix, Arizona,

May 4th, 1914.

TO THE HONORABLE JUDGES OF THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT:

- John Dennett, Jr., J. G. Bogard, J. J. Keating,
6 Rose Boehmer, Mark Bleak, Harry E. Harter,
H. S. Gray, Mary E. Ellsworth, L. M. Gustafson,
A. H. Ferrin, Lucy H. Purdum, H. P. Wightman,
A. C. Lockwood, Alex. Anderson, D. Bohn,
Erit Equist, A. H. Oeltjen, George S. Hughes,
Mrs. W. J. Jackson, Lysander Cassidy, Ramon
Brenna, Ross H. Blakely, John W. Harris, Jr.,
A. C. Morcum, Fred W. Albright, M. Kirshwing,
Alaf Olsen, Theo. Holten and Ole Holten, Hugo
Sandquist, Eugene Seeley, James H. East, Fred
Cadwell, Margaret Cadwell, E. B. Tinker, E. L.

Hosler, S. L. Hosler, Glenn W. Morse, B. G. 7
 Tank Fong, A. E. Gillard, J. C. Wilhelm, Frank
 A. Moss, Geo. K. Anderson, L. D. La Chance,
 Grace Langston, Frank A. Flickenger, Charles
 J. Patterson, E. T. Staebler, Nettie Sheldon,
 Lloyd C. Henning, Wilson Patterson, E. W.
 Clayton, William C. Faulkner, Walter W. Wil-
 liams, J. N. Stratton, W. E. Platt, John F. Weber,
 S. G. Ijams, Ida N. Frye, William Sobey, William
 Whalley, O. W. Miller, William H. Watts, Globe
 Lumber Company, Alfred Hansen, Clara F.
 Bloom, nee Clara Ferrin, Orville Young, Fred
 W. Horn, J. C. Bradley, Oliver Myers, J. W.
 McLean, Joseph Carpenter, John Steigler, C. R.
 Freeman, M. A. Ramirez, E. J. Brunenkant, C. 8
 Brunenkant, Thomas Weedin, Frederick E.
 White, Frederick E. White, assignee of Ah Lee,
 Sam Y. Barkley, M. D. Langley, Mrs. J. N. Rus-
 sell, Cora E. Dunagan, Helen Weber, W. E.
 Young, Mrs. M. L. Graves, Mrs. W. S. Hurst,
 Mrs. C. S. Brown, Maria B. Stevens, A. T.
 Klienschmidt, Rosario A. Brena, A. J. Durago,
 H. Capin, L. C. Frederico and E. T. Collins, the
 petitioners herein, respectfully allege:

1.

That heretofore and on or about July 15, 1912,
 one Charles W. Clark, as complainant, filed a bill 9
 on the equity side of the District Court of the
 United States for the District of Arizona, against
 the Arizona Mutual Savings and Loan Associa-
 tion and the Arizona Trust Company, in his own
 behalf as a stockholder in the defendant Loan
 Association, and on behalf of other stockholders
 in said Loan Association similarly situated.

2.

The complainant Clark was a citizen of the

- 10 State of California and both defendants were corporate citizens of the State of Arizona and the sole ground of Federal jurisdiction was the existence of the diversity of citizenship last specified and a controversy involving more than the amount requisite to vest jurisdiction in a District Court of the United States.

3.

A copy of said bill of complaint is hereto annexed, made a part hereof and marked "Exhibit 1."

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4.

- It appears from the exhibits hereto annexed that in April, 1911, defendant Loan Association had become insolvent and that the officers thereof and those in control of its affairs had caused to be organized the defendant Arizona Trust Company, and had thereafter unlawfully transferred to the Trust Company all of the assets of the Loan Association, then alleged to amount to about one hundred and thirty thousand dollars in value, but that thereafter approximately 90% of all of the stockholders of the Loan Association voluntarily exchanged their stock in the Loan Association for stock in said Trust Company.

5.

The complainant Clark refused to exchange his stock in the defendant Loan Association for stock in the defendant Trust Company and brought his action as a stockholder in the defendant Loan Association for himself and others similarly situated primarily to have the transfer of the Loan Association's assets to the Trust Company annulled, to compel the restoration of the property

to the Loan Association and to wind up the affairs of the Loan Association and, since the Loan Association had no creditors other than its stockholders, to distribute its assets to its stockholders. 13

6.

After the bill was filed and process duly served upon the defendants, your petitioners, at various times between July 15, 1912, and February 27, 1913, during the progress of said cause filed their intervening petitions in said cause, as appears from copies of the said petitions which are hereto annexed, made a part hereof and marked respectively "Exhibit 2," "Exhibit 3," "Exhibit 4" and "Exhibit 5." 14

7.

It appears from said petitions that some of your petitioners hereinafter described for convenience as non-exchanging stockholders, were, like the complainant in said cause, stockholders in the defendant Loan Association, but had never exchanged their stock therein for stock in the defendant Trust Company, while others of your petitioners named in said intervening petitions and hereinafter described as exchanging stockholders, had exchanged their stock in the defendant Loan Association for stock in the defendant Trust Company, and consequently from the time of said exchange, ceased to be and were not then stockholders in the defendant Loan Association. 15

8.

Your petitioners who were exchanging stockholders alleged with particular reference to themselves that they had been induced to exchange

16 their said stock by actionable misrepresentations made to them by the defendants in said cause, and for that reason such exchanging interveners sought a rescission of the exchange of stock and a restoration to their original status as Loan Association stockholders, and as such Loan Association stockholders prayed to join with the complainant in seeking the relief which said complainant sought.

9.

In due course, the defendants appeared and answered the complainants' bill jointly, a copy of
 17 which answer is hereto annexed, made a part hereof, and marked "Exhibit 6." And your petitioners filed a replication to said answer, a copy of which replication is hereto annexed, made a part hereof and marked "Exhibit 7."

10.

On February 27, 1913, said day being within the October, 1912, term of said court, the cause regularly came on to be heard and was duly tried, the evidence and witnesses being heard in open court before the Honorable Richard E. Sloan, then District Judge for the District of Arizona,
 18 the parties to said cause appearing by their respective solicitors.

11.

The trial of said cause resulted in a final decree which was duly entered and enrolled as of the 27th day of February, 1913, copy of which is hereto annexed, made a part hereof and marked "Exhibit 8."

By the said decree of February 27, 1913, the court found that twenty-one of your petitioners were non-exchanging stockholders in the defendant Loan Association and had paid in to said Association the sums set opposite their respective names in said decree, which sums aggregate \$7,349.78, and that seventy-four of your petitioners had paid in to said Association and to said Trust Company, or both, the sums set opposite their respective names in said decree, which sums aggregated \$27,096.93.

The court found the insolvency of the defendant Loan Association and adjudged as to the complaining interveners, your petitioners herein, and other non-consenting stockholders in the defendant Association who had never transferred their stock therein for stock in the defendant Trust Company, that the transaction complained of was "unlawful and invalid and not binding upon the interveners herein or upon the other outstanding and non-exchanging stockholders in the defendant Loan Association."

The court found further that the transfer of the assets of the Loan Association to the Trust Company had so far been consummated and completed that the Trust Company officers had dealt with the assets and properties as though owned by the Trust Company and confused and inextricably mingled the assets of the Loan Association with the assets of the defendant Trust Company, and that at that time it was impracticable and impossible in justice to the parties to direct and

- 22 enforce a re-transfer of all of the original properties and assets so derived by the Trust Company and the profits thereon, to the defendant Loan Association.

15.

- The court found that your petitioners who were exchanging stockholders had been induced to make the exchange by the misrepresentations alleged and as to such of your petitioners decreed a rescission as to such exchange and restored such of your petitioners to their status as stockholders in the defendant Loan Association and to the end
- 23 that the rights of all of the interveners then before the court and all the outstanding stockholders in the defendant Loan Association who had never exchanged their stock therein for stock in the Trust Company might be adequately preserved, protected and treated with equality, the court confirmed the sale and transfer of all the assets of the Loan Association to the defendant Trust Company and adjudged complete title thereto to be vested in the defendant Trust Company, subject nevertheless to a lien, charge and trust for the amounts set forth in said decree, in favor of the interveners then before the court and the other stockholders in the defendant Loan
- 24 Association, specified in Paragraph 8 of the said decree, who did not appear in the cause by counsel, but whose rights were similarly protected nevertheless and who constituted the only stockholders in the defendant Loan Association other than your petitioners, which said other stockholders aggregated fifty-nine in number, and \$21,662.22 in amount.

16.

And the court in and by said final decree of

February 27, 1913, among other things, directed 25
the receiver appointed by said decree, after paying the cost of administering his trust, to pay "pro rata in equal shares to each and all of the interveners herein and to the stockholders of the defendant Loan Association named in the eighth paragraph, such sums of money as might be received until the said interveners and the said non-exchanging Loan Association stockholders named in the preceding eighth paragraph, are paid in full the amounts set opposite their respective names herein, and that the said receiver pay the balance remaining thereafter, if any in his hands, to the defendant Trust Company for the benefit of such persons as may be lawfully entitled thereto." And said decree was made by the 26
learned court in full realization of the fact that all parties injured by the transactions complained of by said Clark and your petitioners were before the court or represented by the Trust Company, as hereinafter shown, in the proceedings relating to the decree of February 27, 1913, except those mentioned in paragraph eight of said decree, whose rights were fully protected, and none of whom complained against said decree, but instead accepted its benefits.

17.

The term of court at which said decree was 27
entered expired on April 5, 1913. On that day, but after the adjournment of the court for said term, Benton Dick, Esq., as solicitor for a large number of persons, filed a motion to intervene and an intervening petition in said cause, a copy of which is hereto annexed, made a part hereof and marked "Exhibit 9." And as appears from an inspection of Exhibit 2 hereof, many persons named in said Exhibit 9 as proposed interveners in said cause had already intervened therein

28 through the solicitor of your petitioners herein, but each of the said persons named in Exhibit 2 who also appear in Exhibit 9, voluntarily withdrew from the said proceeding in or about the month of August, 1912, and instructed your petitioners' solicitor to take no further proceedings in their behalf in said cause, as your petitioners are informed and verily believe. But said motion was not continued over the said term or called to the attention of the court until about April 14, 1913, at which time your petitioners' solicitor brought said petition to the attention of the court then presided over by Circuit Judge William W. Morrow, who then and there sustained a demur-
 29 rer to said petition. Thereafter and on or about July 15, 1913, and long after the expiration of the October, 1912, term of said court at which the said final decree of February 27, 1913, was entered, and while said decree stood unappealed from and unreversed, the same solicitor, Benton Dick, Esq., with two other solicitors, filed in the court his motion on behalf on the same persons for whom he had filed the motion and petition on April 5, 1913, and on behalf of the other persons therein named, therein praying to vacate the final decree of February 27, 1913, and for leave to intervene in said cause, a copy of which motion and inter-
 30 vening petition of July 15, 1913, is hereto annexed, made a part hereof and marked "Exhibit 10."

And your petitioners are advised by their counsel, and so allege the fact to be, that the time in which the defendant Trust Company could have appealed from said final decree of February 27th, 1913, did not expire until August 27th, 1913, but that no appeal therefrom was ever prayed, allowed or prosecuted, either by the defendant Trust Company or any one in its behalf, and that in fact said decree conferred more benefits upon

said defendant Trust Company and the interven- 31
 ers named in Exhibits 9 and 10 as preferred
 stockholders therein, than said Trust Company
 or said interveners were strictly entitled to re-
 ceive. By said decree the equities applicable to
 the situation of the parties as disclosed by the
 evidence were considered, fixed and adjudicated,
 and it was adjudged and determined by the court
 after a full hearing that equity and justice would
 be done to all by an award to all parties who were
 still stockholders in the Loan Association of a
 sum of money which fixed the limit of their
 recovery at the sum of their payments to
 said Companies, without interest thereon, and
 decreed a lien upon the properties of both 32
 Companies, to secure the payment thereof. Such
 a course prevented unnecessary hardship to the
 Trust Company, its innocent creditors and its
 stockholders, including all the interveners men-
 tioned in Exhibits 9 and 10 herein, and assured
 to each of said creditors and stockholders in the
 defendant Trust Company the utmost to which
 they were entitled and enabled said Trust Com-
 pany to continue as a going concern and to en-
 deavor to extricate itself from its difficulties.
 And your petitioners allege that the said de-
 cree of February 27th, 1913, was and is res
 adjudicata upon all of the matters therein
 determined as to the said defendant Trust Com- 33
 pany and the defendant Loan Association, and
 upon all persons claiming from, through or under
 said defendants or either of them, and particu-
 larly upon the interveners named in Exhibits 9
 and 10, hereto annexed.

18.

On or about August 26, 1913, Honorable
 William H. Sawtelle, the respondent herein, qual-
 ified as judge of the District Court of the United

- 34 States for the District of Arizona, and thereafter and on or about September 18, 1913, the said motion and petition, filed by the said Benton Dick, Esq., on July 15, 1913, was brought to the attention of said court presided over by the said Honorable William H. Sawtelle, and argument thereon was heard at length from time to time until the decision thereof on March 12, 1914.

19.

- Your petitioners, through their solicitor, opposed the granting of the said motion, particularly upon the ground that the court was without
- 35 jurisdiction to vacate, change or modify in any material respect, the said final decree of February 27, 1913, in substance, for the reason and upon the ground that the term at which the said decree was entered and enrolled had long since expired when the said motion was made and that the said decree had been rendered by a competent court having jurisdiction both of the persons and of the subject matter involved therein, and that said decree was in no sense void, but was a valid, just and equitable exercise of lawful authority by the said court as constituted on February 27, 1913, and that the court as constituted on and
- 36 after July 15, 1913, was wholly without right, power, authority or jurisdiction to sit as a court of review to revise for alleged errors of fact or law, or to vacate, change or modify the final decree of the same court duly rendered at a preceding term thereof, but notwithstanding the protest of your said petitioners, and without taking any evidence or proof of any of the facts alleged in Exhibit 10 hereto annexed, the said Honorable William H. Sawtelle, as judge of the said court and the said District Court of the United States for the District of Arizona, on March 12, 1914, assumed and purported to vacate

and modify the said final decree of February 27, 1913, and caused to be entered in the place thereof what purports to be another and entirely different decree, copy of which is hereto annexed, made a part hereof and marked "Exhibit 11," and to the making and entry of said decree your petitioners then and there excepted. 37

20.

Immediately after the entry of the said final decree of February 27, 1913, referred to herein as Exhibit 8, the receiver therein appointed, proceeded with the performance of his duties as therein defined, and reduced to possession and to cash a large quantity of the assets of the defendant Trust Company and in or about the month of June, 1913, declared and paid to each of the persons named in the said final decree of February 27, 1913, a ten per cent dividend and in other respects proceeded to carry out and to fulfill the instructions contained in said final decree of February 27, 1913. 38

21.

On or about July 12, 1913, and before the said Benton Dick, Esq., filed his motion and intervening petition of July 15, 1913, referred to herein as Exhibit 10, the Farmers & Merchants Bank, a corporation formerly conducting a banking business in Phoenix, Arizona, recovered a judgment in the Superior Court of Arizona, in and for the County of Maricopa, in the City of Phoenix, against the defendant Arizona Trust Company for the sum of \$18,500.00, with interest thereon, and thereafter, and on or about July 29, 1913, an intervening petition of the said Farmers & Merchants Bank, in the nature of a general creditor's bill, was filed in the said District Court of the 39

- 40 United States, for the District of Arizona, in the said cause of Clark vs. the Arizona Mutual Savings and Loan Association and the Arizona Trust Company, and a motion made by said Farmers & Merchants Bank to extend the receivership of the said Trust Company to its said judgment and for the appointment of a master to take proof of claims against said Trust Company and to marshal and distribute all of the assets of the Trust Company, including the surplus moneys remaining after the terms of the decree of February 27, 1913, had been performed to its creditors and those lawfully entitled thereto, but on or about
- 41 March 12, 1914, the said District Court for the District of Arizona and the Honorable Judge thereof denied the motion and application of the said Farmers & Merchants Bank, and dismissed the said petition of said bank.

- Your petitioners further allege that upon the entry of the said final decree of February 27, 1913, referred to herein as Exhibit 8, your petitioners and all of the stockholders of the defendant Loan Association acquired a vested property right of, in and to all of the assets of the said defendant Loan Association and of the said defendant Trust Company, for the purpose of paying, satisfying and discharging the respective claims of said parties as stockholders of said defendant Loan Association for the amounts which
- 42 each of said persons had paid in to one or both of said companies and that the practical effect of the pretended order and decree entered herein on March 12, 1914, and described as Exhibit 11, if given force and effect and recognized as a valid exercise of authority by the said District Court for the District of Arizona and the Honorable Judge thereof, is to deprive your said petitioners and others similarly situated of the vested property rights acquired by them in and to the assets of said companies under and pursu-

ant to the terms of the said final decree of Feb- 43
 ruary 27, 1913, and moreover that the effect
 thereof is to give to the interveners represented
 by the said Benton Dick, Esq., and described in
 Exhibits 9 and 10 herein, the right to participate
 with your petitioners herein as stockholders in
 the defendant Loan Association notwithstanding
 the fact that said interveners are no longer and
 have not been for a long period of time, to-wit.
 since about the year 1911, stockholders in the
 Loan Association, but for a long period of time,
 to-wit, since about May, 1911, have been and now
 are preferred stockholders in the defendant Trust
 Company, all of whose claims, rights and interests
 were duly and properly represented before the 44
 District Court of the United States in the said
 cause of Clark vs. the Arizona Mutual Savings
 and Loan Association, and the Arizona Trust
 Company, by and through the defendant Arizona
 Trust Company, in which the said persons then
 were and still are preferred stockholders, and that
 their rights as stockholders therein were ade-
 quately and equitably protected by the court in
 and by the said decree of February 27, 1913, and
 that the said stockholders in the defendant Trust
 Company have each and all been guilty of laches
 and unreasonable delay in the presentation and
 assertion of their present claim to be entitled like
 your petitioners herein to rescind the exchange 45
 of their stock in the Loan Association which they
 made for stock in the defendant Trust Company.
 And your petitioners herein verily believe that
 after full knowledge of the pendency of the said
 cause and of the fact that their rights as preferred
 stockholders in the defendant Trust Company
 were necessarily involved therein, the said inter-
 veners named in said Exhibits 9 and 10 hereto
 annexed, speculated upon the result of said cause
 and the benefits which they would derive there-
 from as preferred stockholders in the defendant

- 46 Trust Company until long after the entry of said final decree, when said interveners learned of the recovery of one or more judgments against the defendant Trust Company for substantial amounts, which would in the ordinary course of events naturally have priority in the distribution of the assets of the said Trust Company over and above the said interveners as preferred stockholders in said Trust Company. And your petitioners allege that they are advised and verily believe that, among other things, the practical effect of the decree of March 12, 1914, referred to herein as Exhibit 11, if given effect and recognized herein as a valid order of the said District
- 47 Court of the United States for the District of Arizona, will be to establish an entirely novel but illegal method of enabling ordinary preferred stockholders of an insolvent institution, i.e., the defendant Trust Company, to obtain a priority in the distribution of the assets of the defendant Trust Company over and above the lawful judgment creditors of the said defendant Trust Company. And your petitioners allege that the further effect of said decree will be to place said persons who have no right, title or interest in any of the assets or properties of the defendant Loan Association upon an equal footing as participants therein with your petitioners who,
- 48 as the result of their diligence in the prosecution of said cause, acquired their vested property rights, as herein disclosed and set forth in the final decree of February 27, 1913, all of which your petitioners respectfully allege, will result in great damage and irreparable loss to your said petitioners and each of them.

And your petitioners further say that the further effect of recognizing as valid the said decree of March 12, 1914, described herein as Exhibit 11, will be to extend indefinitely and for a period covering several years the settlement

and distribution of the insolvent estate of the 49
 defendant Loan Association now reduced to
 the appraised value of only about \$70,000.00,
 and greatly to enhance and to increase the
 cost of administering said estate and to im-
 pose upon said insolvent estate and the liti-
 gants interested therein a needless burden and
 expense in the administration thereof, and further
 that it was and still is impossible and impracti-
 cable to perform the terms and conditions of the
 said decree of March 12, 1914, for the reasons
 above set forth, and that the said decree of
 March 12, 1914, has unsettled and will unsettle,
 if given validity, property rights of large value
 and in which your petitioners are deeply con- 50
 cerned and interested.

23.

Your petitioners are informed and advised by
 their counsel and verily believe that the said Hon-
 orable William H. Sawtelle, as Judge of the Dis-
 trict Court of the United States for the District of
 Arizona and the said District Court of the United
 States for the District of Arizona, was and is
 wholly without jurisdiction, after the expiration
 of the October, 1912, term of said court, to enter-
 tain the said motion and petition of intervention
 referred to herein as Exhibit 10, and to enter the 51
 said decree of March 12, 1914, referred to herein
 as Exhibit 11, or to enter any order vacating or
 modifying or changing the said final decree of
 February 27, 1913, described herein as Exhibit 8,
 or any other order in said cause affecting your
 said petitioners and their interests as created by
 said final decree of February 27, 1913, and that
 the said Honorable Judge of the said District
 Court and the said Court should be prohibited by
 the writ of this Honorable Court from making or
 entering any order in the premises in any way

52 changing, modifying or vacating the said final decree of February 27, 1913, and that any order which may be made or entered in the premises inconsistent with said final decree should be annulled and expunged from the records of the said court.

24.

And your petitioners are further advised by their counsel and verily believe that they are entitled to the remedy herein sought for the reason that, among other things, it appears upon the face of the record presented to this Honorable Court as a matter of law and not as a disputed matter
53 of fact that the said Honorable William H. Sawtelle, as District Judge of said Court, and the said Court were wholly without jurisdiction to make and enter the said order of March 12, 1914, and that your petitioners have no other adequate remedy by which to redress the grievances and the extraordinary situation in which your petitioners are placed by the said acts of the said Honorable Judge and the District Court aforesaid. And your petitioners are advised that the said decree of March 12, 1914, referred to herein as Exhibit 11, is not a final decree in such a sense as to render it appealable to, or otherwise reviewable in, the Circuit Court of Appeals.

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25.

On April 13, 1914, your petitioners made a motion in the Supreme Court of the United States for leave to file a petition for a writ of mandamus or prohibition, or both, directed to the court and judge below, because of the matters herein set forth; but on April 20, 1914, the Supreme Court denied without opinion the motion. The petitioners allege that they are advised by their counsel that said application should have been submitted to the Circuit Court of Appeals in and for the Ninth Circuit, instead of to the Supreme Court of the United States.

WHEREFORE, your petitioners and each of them,

respectfully pray that an order or rule be made 55
 and issued by this Honorable Court directing
 the said Honorable William H. Sawtelle as Judge
 of the United States District Court for the Dis-
 trict of Arizona, and directing the said District
 Court to show cause, if any there be, why a writ
 of mandamus should not issue out of this Honor-
 able Court prohibiting said Judge and Court from
 assuming or exercising any jurisdiction over the
 said final decree of February 27, 1913, and com-
 manding the said Judge and the said Court and
 each of them to annul, set aside and expunge
 from the records of said Court the said order or
 decree of March 12, 1914, and to desist and cease
 from exercising jurisdiction in the said cause con- 56
 trary to and in violation of the terms of said final
 decree of February 27, 1913, and that your peti-
 tioners have such other and further writ or relief
 as to this Honorable Court may seem just and
 proper, and your petitioners and each of them, as
 in duty bound, will ever pray.

WILLIAM M. SEABURY,
 Solicitor for Petitioners,
 Fleming Building,
 Phoenix, Arizona.

STATE OF ARIZONA, }
 COUNTY OF MARICOPA. } ss.

John Dennett, Jr., being duly sworn, deposes 57
 and says: That he is one of the petitioners named
 in the foregoing petition; that he has read the
 same and knows the contents thereof. That said
 petition is true of deponent's own knowledge ex-
 cept as to matters therein stated to be alleged on
 information and belief, and as to these matters
 he believes them to be true, and that deponent
 verifies the said petition in his own behalf and on
 behalf of the other petitioners therein named.

JOHN DENNETT, JR.

Sworn to and subscribed before me this 1st
 day of May, 1914.

ARTHUR H. DE RIEMER,
 Notary Public.

My commission expires August-3, 1917.

EXHIBIT I.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK,
Complainant,

vs.

ARIZONA MUTUAL SAVINGS
AND LOAN ASSOCIATION,
and the Arizona Trust
Company,

Defendants.

In Equity

No.

59

TO THE HONORABLE JUDGE OF THE DISTRICT
COURT OF THE UNITED STATES, FOR THE DIS-
TRICT OF ARIZONA, SITTING IN EQUITY:

Charles W. Clark, a citizen of the United States and resident in the State of California, brings this, his bill of complaint, against the Arizona Mutual Savings and Loan Association, a corporation duly organized under the laws of the Territory and now existing under the laws of the State of Arizona, and against the Arizona Trust Company, a like corporation, as hereinafter set forth. And thereupon your Orator complains and says:

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FIRST.—That heretofore, on or about October 23, 1899, the defendant, the Arizona Mutual Savings and Loan Association, hereinafter designated as the Loan Association, was duly organized under the laws of the Territory of Arizona, and now so exists under the laws of the State of Arizona, and that the purposes and objects for which said corporation was incorporated are set forth

in Article II of the Articles of Incorporation 61
thereof, as follows:

“The purposes for which this corporation is organized, and the general nature of the business proposed to be transacted, shall be and is the accumulation and loaning the funds of its members, stockholders and depositors; to receive deposits of money and loan, invest and collect the same with interest, and repay the depositors, with or without interest, and generally to loan money on real estate and other valuable securities, and to receive on deposit the savings of such persons as may desire to deposit them, and to pay interest and dividends on the same as they may accrue, and if deemed desirable to do a general banking business.” 62

That thereafter and about the 11th day of April, 1911, the purposes and objects of the said Loan Association remained unchanged as specified, and that at no time during said period did the said Loan Association assume to do any business other than a loan and savings business, in which the said Loan Association received moneys from its depositors and occasionally loaned certain of said moneys to certain of its stockholders, but that it did not engage in a general banking or other business, and that its purposes and objects were limited exclusively to the said savings and loan business, as aforesaid. That on or about April 11, 1911, an alleged majority vote of the stockholders of the said Loan Association purported to amend the articles of incorporation of said Loan Association so that thereafter Article II of the said Articles of Incorporation read as follows: 63

“The purposes for which this corporation is organized, and the general nature of the business proposed to be transacted, shall be and is the ac-

- 64 cumulation and loaning the funds of its members, stockholders and depositors; to receive deposits of money, loan, invest and collect the same with interest, and repay depositors with or without interest, and generally to loan money on real estate and other valuable securities, and to receive on deposit the savings of such persons as may desire to deposit them, and to pay interest and dividends on the same as they may accrue, and if deemed desirable to do a general banking business; *to buy, negotiate for and exchange and otherwise dispose of stocks, bonds and other securities of other corporations, or of this corporation, and any and all kinds of real and personal property, and to vote*
 65 *upon any shares of stock owned by the corporation."*

That at all times hereinafter mentioned said corporation had and maintained its principal place of business in the City of Phoenix, in the Territory and State of Arizona.

- SECOND.—That the defendant, Arizona Trust Company, is a corporation organized under the laws of the Territory of Arizona and now existing under the laws of the State of Arizona; that said corporation was incorporated on or about March the 21st, 1911, and among other things the nature of the business in which said corporation was
 66 authorized to engage included the right to do a banking business, either commercial or savings, and do to a general trust business, and to sell and issue all, or any part, of its capital stock, or any bonds, debentures or other evidences of indebtedness authorized by its board of directors, in payment for the good will, rights, business, real property, real estate or leases thereon, of any person or corporation, and either as agent or principal to purchase, receive, hold, sell, own and otherwise deal in bonds, mortgages, debentures, notes, shares of capital stock or other securities, obliga-

tions, contracts and evidences of indebtedness of 67
any private, public or municipal corporation
wherever located, and to negotiate, buy, sell and
underwrite the stocks, bonds, securities and assets
of all such corporations as are described therein.

That at all times hereinafter mentioned the said
defendant Trust Company had and maintained,
and still maintains its principal place of business
in the City of Phoenix, in the Territory and State
of Arizona.

THIRD.—That heretofore and prior to April 11,
1911, to-wit, on or about January 1, 1908, your
Orator, the complainant above named, acquired
and became the owner of Certificate No. 2601 68
for one hundred shares of the par value of \$10,-
000, of Class F. Special Investment Stock in the
defendant Loan Association, and that there is
now due upon the books of the said defendant
Loan Association as a balance in favor of the
said complainant on account of moneys heretofore
paid in to said Loan Association on account of
the purchase price of said stock the sum of thirty-
three hundred dollars. That ever since your
Orator became a subscriber to the said one hun-
dred shares of said stock he has fully and in all
things duly performed each and all of the terms
and conditions of the contract of purchase here-
tofore existing between your said Orator and the 69
said defendant Loan Association, and notwith-
standing the matters hereinafter set forth your
said Orator has, on the first day of each and every
month from the 1st day of January, 1908, paid to
the said defendant Loan Association the sum of
sixty dollars, making in all fifty-five monthly pay-
ments on account of the purchase price of said
stock, and making the total payment, as aforesaid,
of the said sum of thirty-three hundred dollars.
That at all times hereinafter mentioned your said
Orator was and now is a citizen of the United

70 States and citizen of and a resident in the State of California, and that the above entitled cause is a suit of a civil nature in equity in which the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and is between citizens of different states, to-wit, between your Orator as complainant as a citizen of the State of California, against the defendant corporations, each of which defendants are, as herein stated, a resident and citizen of the State of Arizona.

And your Orator further alleges the fact to be that he was a shareholder in the said defendant Loan Association at the time of the transactions
 71 and each of them of which he complains herein, and that this suit and controversy is not a collusive one to confer upon the court of the United States jurisdiction of a case of which it would not otherwise have cognizance. And, as will more fully appear herein, your Orator alleges that it would be and is futile and useless for him to apply to the officers and directors of the defendant Loan Association for the relief prayed for herein, and that those who at present assume to act as the officers and directors of the defendant Loan Association have openly connived at the fraud and approved of the transactions hereinafter set forth. And,
 72 moreover, that the defendant Arizona Trust Company claims to be the holder and owner of upwards of eighty-five per cent of the capital stock of the defendant Loan Association, and that by reason thereof it would be and is, as more fully appears herein, futile and useless for your said Orator to seek redress for the matters hereinafter set forth at the hands of the majority of the stockholders in said defendant Loan Association.

FOURTH.—That your Orator is one of many of the class of stockholders in said defendant Loan Association who are the holders and owners of

certificates of stock therein, and as such entitled to all the rights, privileges and property as such stockholders in said defendant Loan Association, and that said rights, among other things, include the right of your Orator and other stockholders similarly situated to participate in all of the assets of the said defendant Loan Association, and upon a distribution thereof to receive such, if any, property as may remain undistributed as the property of the said defendant Loan Association, after said defendant Loan Association has discharged all of its obligations to its said stockholders in paying and discharging such stock therein as may have matured and become due and payable from said defendant Loan Association to the members entitled thereto.

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FIFTH.—That on or about the 11th day of April, 1911, the officers and directors of the said defendant Loan Association well knew, and your Orator alleges the fact to be that said defendant Loan Association was then, and the said defendant Loan Association is now, wholly insolvent and unable to meet its accruing obligations as the same matured and became due and payable to its stockholders therein. That thereupon the said officers and directors of the said defendant Loan Association, failing in their duty and obligation as trustees for the benefit of your Orator and other stockholders similarly situated therein, failed and neglected to dissolve the said corporation and to liquidate the obligations thereof, and distribute the assets of the said defendant Loan Association among the stockholders thereof, including your Orator above named, and instead the said officers and directors, *without the knowledge and consent of your Orator, and without the knowledge and consent of many others similarly situated*, entered into a corrupt and fraudulent agreement with certain persons, whose names to

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- 76 your Orator are at present unknown, whereby it was agreed that a trust company to be known as the Arizona Trust Company, the defendant above named, should be organized for the purpose of taking over the assets and property of the said defendant Loan Association. And thereupon a pretended directors' meeting of the said defendant Loan Association was called and held, and thereafter and on or about the 11th, 12th, 13th and 14th days of April, 1911, respectively, a pretended stockholders' meeting of the said defendant Loan Association was called and held, and it was resolved in and by the said meetings that the said defendant Trust Company, which had then been
- 77 organized to fulfill the purposes herein alleged, would sell to the defendant Loan Association above named, 1300 shares of its capital preferred stock, of the par value of \$100 each, and of the aggregate face value of \$130,000, and that said defendant Loan Association would buy the said stock at the said face value thereof, and in payment thereof would make, execute and deliver to the said defendant Trust Company all of the assets and property, including the good will of the defendant Loan Association above named, and in addition thereto it was agreed by said defendant Loan Association that as part of the consideration for said transaction that the said defendant Loan
- 78 Association would suspend and cease its business and refrain from entering into competition with said defendant Trust Company for a period of two years from the date thereof. And it was further agreed that whereas the said defendant Loan Association would procure the release and termination of a certain contract dated January 10, 1910, made between the defendant Loan Association and one F. L. Blumer, and by Blumer heretofore assigned to and held by one H. D. Underwood, that the said Loan Association would be relieved from all claims and obligations on ac-

count thereof, it was alleged to be deemed desirable and that the best interests of the said Loan Association to make the contract aforesaid. And it was declared further that it was considered that three hundred shares of the common stock of the said Arizona Trust Company is and was a reasonable price for the surrender and termination of said contract, and for all claims of the said Underwood and one A. C. LeBaron against the said defendant Loan Association. 79

SIXTH.—On information and belief your Orator further alleges that in the latter part of April, or at or near the first day of May, 1911, the defendant Arizona Trust Company made, or pretended to make, a delivery to the said defendant Loan Association of the said 1300 shares of preferred stock in said defendant Trust Company, or delivered the said defendant Loan Association the promise and obligation of the said defendant Trust Company to deliver said shares as and when the same might be issued. That thereupon the said defendant Loan Association pretended to sell, assign, transfer and set over to the said defendant, Arizona Trust Company, all of its said assets, property, notes, mortgages and other securities of every kind and character, and the said defendant Trust Company then and there received said assets, which were of the value of upwards of \$130,000, since which time the said defendant Trust Company exclusively has exercised control and dominion over the said assets and securities, and each of them, although, as your Orator is informed and verily believes, the record title to many of the said real estate securities so attempted to be transferred from the said defendant Loan Association to the said defendant Trust Company, still stand in the name of the said defendant Loan Association. And that notwithstanding the matters herein set forth the said 80 81

82 defendant Trust Company has ever since April, 1911, dealt with the said securities and properties as though they belonged to the said defendant Trust Company and to certain of the individual officers thereof. But your Orator alleges the fact to be that there was no right, power or authority in the said defendant Loan Association, or a majority of the directors or stockholders thereof, to convey all or any of its assets for the purposes above named, or to place the said defendant Trust Company, or any of its officers, in possession thereof, and that said transfer and all of the said acts herein set forth were made *without the knowledge, consent or acquiescence of your said*

83 *Orator and in violation* of his rights as a stockholder in the said defendant Loan Association, and in violation of the obligations of the said defendant Loan Association to your Orator above named, and in violation of the obligation which the said defendant Loan Association owed to all stockholders similarly situated, and in further violation of the contract which then and now exists between your Orator and other stockholders similarly situated and the said defendant Loan Association.

And your Orator alleges on information and belief that the purpose of said transfer was in

84 really a fraudulent scheme improperly to perpetuate the existence of the defendant Loan Association after it had in fact, as heretofore alleged, become and was insolvent, and was in fact unable to perform and discharge its duties and obligations to its said stockholders by reason of the said defendant Loan Association's insolvency, and by reason of the fact that said defendant Loan Association had suspended the operation of its said business and had conveyed, or attempted to convey, among its other assets, its good will to the said defendant Arizona Trust Company, and had in other respects violated, broken and destroyed

its contract with your said Orator above named 85
and other stockholders similarly situated. That
the defendant Trust Company with full know-
ledge of all the facts herein set forth, and with
full knowledge of the fact that in April, 1911, due
to the insolvency of the defendant Loan Associa-
tion, the officers and directors thereof became and
were trustees for the benefit of your Orator and
other stockholders similarly situated, and that the
assets and property of the said defendant Loan
Association were thereupon and thereafter im-
pressed and charged with the trust for the benefit
of your said Orator and other stockholders in said
defendant Loan Association similarly situated,
and notwithstanding the fact that the said de- 86
fendant Loan Association had no other debts or
obligations than those which it owed to your
Orator and other stockholders therein similarly
situated, the said defendant Trust Company, with
full knowledge of all of the matters herein set
forth, took over the said assets and property of
the said defendant Loan Association and pro-
ceeded to and did announce to the stockholders
thereof that the said purchase and sale of the
assets and properties of the said defendant Loan
Association had been and was then completed
and that the said defendant Trust Company had
paid for the assets of the said defendant Loan
Association the purchase price thereof, i. e. the 87
sum of \$130,000 by and with preferred stock of
the said Arizona Trust Company, and that to in-
duce the stockholders of the said defendant Loan
Association to come into and become stockholders
in said defendant Trust Company, the said de-
fendant Trust Company offered to sell or ex-
change other shares of its preferred stock for
shares of the stock held by the individual stock-
holders of the said defendant Loan Association,
and that as your Orator is informed and verily
believes, many of the former stockholders in said

88 defendant Loan Association delivered their certificates of stock in the defendant Loan Association to the said defendant Trust Company and received in the place thereof the promise of the defendant Trust Company to issue as and when paid for other shares of preferred stock in the said defendant Trust Company. But your Orator alleges the fact to be that as the stockholders of the defendant Loan Association surrendered their stock to the said defendant Trust Company the defendant Trust Company, acting in concert and in conspiracy, through its officers and directors and those in charge and control of the defendant Loan Association, depleted and withdrew from
 89 the treasury of the defendant Loan Association a proportionate share of the 1300 shares of preferred stock theretofore delivered and transferred by the defendant Trust Company to the defendant Loan Association as the alleged purchase price and consideration for the transfer by the defendant Loan Association of all its assets and property, aggregating \$130,000 in amount, to the said defendant Trust Company.

And your Orator alleges upon information and belief that an examination of the books and assets of the defendant Loan Association made on or about April 12, 1912, by one J. F. Tracy, as Bank Examiner under the direction of the Honorable
 90 J. C. Callaghan, Bank Comptroller of the State of Arizona, made as of the close of business on April 9, 1912, disclosed the fact to be that at said date there was then and there outstanding stock of the said defendant Loan Association and the owners of which were to a great number similarly situated as your said Orator, and aggregating in amount about \$43,008.88, which amount represented the alleged book value of the stock of the said stockholders in the said Loan Association as of said day. And in this connection, your Orator is informed and therefore alleges the fact to be that

as pretended security for the performance of the obligations of the defendant Loan Association due to said stockholders there was set apart and segregated from the assets received by the defendant Trust Company from the defendant Loan Association real estate security of the alleged face value of approximately \$43,417.31, but that in fact the said real estate security so pretended to be placed as security for the performance of the defendant Loan Association's obligations to its said outstanding stockholders, as aforesaid, were in reality and now are the property of the defendant Loan Association and not the property of the defendant Trust Company, the officers of which pretended to set apart said assets for the alleged benefit of said stockholders in the defendant Loan Association. And, moreover, that the said sum of securities has been reduced in amount at the present time until as plaintiff is informed and verily believes there remains approximately only \$20,000 to secure the obligations of the defendant Loan Association to such of its stockholders similarly situated with your Orator, who have refused to accept the offer of the defendant Trust Company to purchase its preferred stock in exchange for the surrender of the rights of your Orator and others similarly situated in and to the assets of the defendant Loan Association in which they are stockholders.

And your Orator further alleges the fact to be that there was on April 11, 12, 13 and 14, 1911, and at all times subsequent thereto a close and intimate relationship of trust and confidence existing between the officers of the defendant Trust Company and the officers of the defendant Loan Association, and that it became and was the duty of the officers and directors of the defendant Trust Company in assuming to and in dealing with the assets and properties of the said defendant Loan Association, with full knowledge

94 of each and all of the facts herein set forth, to safeguard and to protect the interests of your Orator above named, and other stockholders in the defendant Loan Association similarly situated. But your Orator is informed and verily believes, and therefore alleges the fact to be, that the officers and directors of both of said defendants, willfully violated their said duties and the said trust and confidence which should have existed between them and Your Orator and other stockholders similarly situated, in that the said officers and directors of the said defendant Trust Company dealt with the said property and securities belonging to the said defendant Loan Association

95 for their own private, selfish ends and purposes and without the slightest benefit to your Orator and other stockholders in the defendant Loan Association similarly situated, and that at the present time the officers and directors of the defendant Trust Company are in control of all of the assets of the defendant Loan Association. And, moreover, said officers and directors of the defendant Trust Company, acting in concert and collusion with those in control of the affairs of the defendant Loan Association, have unlawfully withdrawn and reacquired possession of the consideration and purchase price theretofore paid

96 and agreed to be paid by the defendant Trust Company to the said defendant Loan Association for the transfer of all the property of the said defendant Loan Association to the said defendant Trust Company, i. e. the sum of 1300 shares of the preferred capital stock of the said defendant Trust Company, the face value of which amounts to the sum of \$130,000. And in this connection, upon information and belief, your Orator alleges the fact to be that as a result of the unlawful and fraudulent scheme and purpose heretofore alleged, the fact is and your Orator so alleges that at the present time the defendant Arizona Trust Com-

pany, not only has possession and control and pretended ownership of all of the assets and property of the defendant Loan Association, but in addition thereto has regained possession of the entire purchase price thereof, i. e. the said sum of \$130,000 of the face value of preferred stock in said defendant Trust Company. 97

And your Orator further alleges in this connection that it is the purpose of the defendant Trust Company to retire and to cancel all of the said 1300 shares of the par value of \$100 each of the preferred stock of the defendant Trust Company, and by so doing thereby to enhance and to increase in value the common stock of the defendant Trust Company, all to the irreparable damage and injury, not only of the defendant Loan Association, but of your Orator and other stockholders therein similarly situated. 98

And your Orator further alleges upon information and belief that at the time of the organization of the said defendant Trust Company for the purposes aforesaid, it had no assets or property of any kind or character and that at the time the defendant Trust Company entered into the agreement aforesaid with the defendant Loan Association to sell 1300 shares of its preferred stock to the said Loan Association in consideration of the transfer of all of the assets of the said defendant Loan Association to it, the said stock was worthless and had no value of any kind or character, and that the only value, if any, which said stock acquired immediately thereafter was due to the pretended transfer and sale of the assets of the said defendant Loan Association to the said defendant Trust Company as aforesaid. 99

And your Orator further alleges that by reason of the matters herein set forth, all of the assets and property of the defendant Loan Association have been used by the defendant Trust Company in the exploitation of various speculative enter-

- prises, in which said defendant Trust Company has engaged, and that in connection with said enterprises the assets of the defendant Loan Association have been used by the said defendant Trust Company and the officers thereof, and that the said assets have been and have become mingled with certain other assets of the defendant Trust Company subsequently acquired by it, and that by reason thereof your Orator and other stockholders in the said defendant Loan Association have acquired equities and rights in connection with said after acquired property of the said defendant Trust Company, but that it is difficult now to separate and to segregate the assets
- 101 which have at all times belonged to the said defendant Loan Association, and possession of which was acquired by the defendant Trust Company, as aforesaid, from such, if any, assets as have been acquired subsequently by the defendant Trust Company, and that the acts of the officers of the defendant Trust Company in so intermingling and merging the assets of both the said defendants above named, were done and performed with full knowledge of all of the facts herein alleged and was a deliberate and preconceived attempt to secure the assets and property of the defendant Loan Association at the sacrifice of the rights and interests of your Orator and other
- 102 stockholders in said defendant Loan Association similarly situated.

And your Orator further alleges that the said defendant Trust Company is now engaged in using the said assets and property of the defendant Loan Association in which your said Orator and other stockholders therein similarly situated has and have an interest for the purposes and objects wholly beyond the scope of the purposes and objects for which the defendant Loan Association was incorporated, and still exists as a corporate entity, all to the great and lasting

damage and irreparable injury of your Orator 103
above named and others similarly situated.

SEVENTH.—On information and belief your Orator further alleges the fact to be that if the defendant Trust Company be required to return the said \$130,000 worth of assets heretofore received by it to the said defendant Loan Association that then and in that event the defendant Trust Company will be wholly insolvent.

And on information and belief your Orator further alleges that it is impossible to determine the exact rights and equities of your Orator above named and others similarly situated in and to the assets of the defendant Loan Association 104
without a judicial accounting between both of the defendants above named and between your Orator and others similarly situated and the defendant Loan Association, and that the officers and directors of both of said defendants are so intimately and closely associated and connected in the transactions aforesaid that it would be and is utterly useless and futile for your Orator and other stockholders similarly situated to demand that the officers and directors of the defendant Loan Association proceed forthwith to recover each and all of the assets heretofore unjustly appropriated by the defendant Trust Company as herein set forth, for the reason that said action 105
would require the said officers and directors to repudiate their own acts and would require and necessitate the bringing of one or more actions against themselves to compel said officers and directors to account for their official misconduct in connection with the matters herein set forth, and for that reason your Orator brings this bill in equity in his own behalf and in behalf of all others similarly situated, to the end that the transactions herein set forth as heretofore made between the defendants above named be annulled

106 and declared void and held for naught, and to the end that an accounting may be had between the two defendants above named, and between the defendant Loan Association and your Orator and others similarly situated, and to the end that the property and assets of the defendant Loan Association, in which your Orator and others similarly situated has and have respectively an interest, may be conserved and protected, and that a receiver of the defendant Loan Association may be forthwith appointed, with full powers to acquire and take possession of and to marshal the assets of the defendant Loan Association in whosoever hands the said assets and properties
 107 may be, and to ascertain the amounts due and owing from the said defendant Loan Association to your said Orator and other stockholders thereof similarly situated, and that such sums of money, if any, as may be due and owing to the defendant Loan Association be ascertained and determined, and that your Orator and others similarly situated, who may desire to intervene herein in support of this bill of complaint may be permitted so to do, and that your Orator and such persons as may intervene, as aforesaid, may be awarded such other relief as to a court of equity may seem proper.

108 And your Orator further alleges he has not, and that other stockholders of the defendant Loan Association similarly situated, have not, any other adequate remedy by law or otherwise, for the protection and preservation of the property and rights of your Orator and others similarly situated as herein set forth.

In consideration whereof, and for as much as your Orator is remediless in the premises at and by the strict rules of the common law, and is only relievable in a court of equity where matters of this kind are properly cognizable and relieveable,

your Orator, therefore, prays the judgment of 109
this Honorable Court:

That the transactions herein set forth as made between the defendants above named may be declared to be annulled and of no force and effect, and that a resituation of all of the assets of the defendant Arizona Mutual Savings and Loan Association from the defendant Arizona Trust Company be adjudged and decreed and that an accounting between both of the defendants above named be had and taken, and that an accounting between the defendant Loan Association and your Orator and other stockholders similarly situated be ordered and decreed.

And that, inasmuch as the said defendant Loan 110
Association has been since April 11, 1911, and now is insolvent, as aforesaid that a receiver be appointed with authority to reduce to possession all of the assets of the said defendant Loan Association wheresoever found or situated, and that the court appoint a master to take proof of the facts alleged in this, your Orator's, bill and to determine the rights and equities of your said Orator, and all of the parties concerned herein. And that the affairs of the said defendant Loan Association be wound up, its assets marshaled as aforesaid, and distributed to those found to be entitled thereto.

And your Orator further prays that a writ 111
of injunction issue out of and under the seal of this Honorable Court, according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the said defendant Arizona Trust Company, its officers, directors, agents and all other persons, from interfering with, transferring, selling or disposing of any of the said property and assets of the said defendant Loan Association.

And that your Orator may have such other and further relief in the premises as the nature

112 and circumstances of this case may require, and to this Honorable Court may seem meet and proper.

And may it please your Honor to grant unto your Orator a writ of subpoena of the United States of America, issued out of and under the seal of this Honorable Court, directed to the defendant Arizona Mutual Savings and Loan Association, and to the defendant Trust Company, then and thereby commanding each of said defendants, on a day certain thereof to be named, and under a certain penalty, to be and appear before this Honorable Court then and there to answer (but not under oath, an answer under
113 oath being expressly waived), all and singular the premises, and to stand to, to perform and abide by the said order, direction and decree as may be made against them in the premises, as shall seem meet and agreeable to equity and good conscience, together with the costs and expenses of this suit.

And your Orator, as in duty bound, will ever pray.

LEROY ANDERSON,
WILLIAM M. SEABURY,
114 Solicitors for Complaint.

UNITED STATES OF AMERICA,	}	SS:
DISTRICT OF ARIZONA,		
STATE OF ARIZONA,		
COUNTY OF MARICOPA.		

William M. Seabury, being duly sworn, says: That he is a solicitor of this court; that he is one of the solicitors for the complainant above named. That he has read the foregoing bill of complaint and knows the contents thereof. That the alle-

gations therein contained, as far as they relate 115
to his own acts, are true, and as far as they relate
to the acts of others he believes them to be true.
That in regard to all matters and things in the
foregoing bill of complaint alleged which are not
within the personal knowledge of this deponent,
the deponent has been fully informed and he be-
lieves that the same are true. That the reason
why this bill of complaint is not verified by the
complainant herein and is verified by the depon-
ent, is that complainant is, as deponent is in-
formed and verily believes, a non-resident of the
state of Arizona, and a resident of the state of
California, and is now absent from the state of
Arizona, and is inaccessible thereto, and that the 116
facts therein alleged are peculiarly within the
knowledge of deponent as obtained by him from
examinations, personally conducted by him, of the
records on file before the Arizona Corporation
Commission in connection with the application of
the Arizona Trust Company for a certificate
authorizing it to transact business in the state of
Arizona, and from all the testimony which de-
ponent has heard relating to the subject matter
herein involved, and from communications re-
ceived by deponent from many other stockholders
in the defendants above named and from other
sources of information.

W. M. SEABURY.

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Subscribed and sworn to before me, this 13th
day of July, A. D. 1912.

O. E. SCHUPP,
Notary Public.

My commission expires February 15, 1916.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK,

Complainant,

vs.

ARIZONA MUTUAL SAVINGS

AND LOAN ASSOCIATION,

and the Arizona Trust Com-
pany,

Defendants.

In Equity.

No.

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120

The petition of John Dennett, Jr., J. G. Bogard, J. G. Keating, Rose Boehmer, Edward F. Brown, Ross H. Blakely, John W. Harris, Jr., E. B. Tinker, A. E. Morcom, Margarite Babbitt, Fred Hensing, Thomas Ricket, Charles Schulz, John Wagner, August Johnson, J. Griffiths, John Francis, Balzer Heck, August Schwalbe, Elmer Carroll, Frank Smakel, August Neu, William Lannom, Martin Taylor, Dave Lovell, John Steinmetz, Maud Webster, Frank Conrad, Fred Albright, John Simmons, M. Kirschwing, Olaf Olson, Theodore Holton, Hugo Sandguist, Eugene Seeley, E. F. Stachler, James H. East, F. E. Cadwell and Margaret Cadwell, intervenors herein, through their attorney and solicitor, William M. Seabury, respectfully alleges and shows to this Honorable Court:

That heretofore, and on July 15, 1912, there was filed in this Honorable Court a bill of complaint in equity wherein one Charles W. Clark was complainant and the Arizona Mutual Savings & Loan Association, and the Arizona Trust

Company were defendants. That said suit and 121
controversy was brought by the complainant
above named on behalf of himself and all others
similarly situated, as stockholder in the defend-
ant, the Arizona Mutual Savings and Loan Asso-
ciation, for the relief prayed for in said bill of
complaint.

2. That the petitioners, John Dennett, Jr., J.
G. Bogard, J. G. Keating and Rose Boehmer, are
and at all times since the 1st of April, 1911, have
been stockholders in the defendant, Arizona Mu-
tual Savings and Loan Association, and that each
and all the other petitioners above named since
April, 1911, have become and now are stockhold- 122
ers in the defendant Arizona Trust Company.

3. That each of your petitioners above named
desire to intervene in the above entitled cause in
support of the allegations contained in complain-
ant's bill heretofore filed herein, to the end that
the rights of your said petitioners and each of
them, in connection with each and all of the mat-
ters set forth in said complainant's bill may be
protected and may be submitted to the jurisdic-
tion of this court, by it to be dealt with in accord-
ance with law and equity and the rules and prac-
tice of this Honorable Court. And in this con-
nection, your said petitioners and each of them, 123
in support of this, their petition for leave to in-
tervene, refer to and beg leave to make a part
hereof as though set forth at length herein each
and every paragraph of the complainant's bill of
complaint herein, save and except so much of
paragraph 3 thereof as relates exclusively to the
complainant herein.

4. That in addition to the matters herein set
forth by reference to complainant's bill as afore-
said, your petitioners herein, who are stockhold-

124 ers in the defendant Arizona Trust Company, as
aforesaid, allege that heretofore each of said peti-
tioners were stockholders in the defendant, Ari-
zona Mutual Savings and Loan Association, and
as such entitled to all the rights and privileges of
such stockholders in and to their proportionate
share of the assets and properties of the said de-
fendant Arizona Mutual Savings and Loan Asso-
ciation. *That at various times subsequent to*
April, 1911, your said petitioners, and each of
them, were induced to surrender their said stock
in the Arizona Mutual Savings and Loan Asso-
ciation by the false and fraudulent misrepresenta-
125 *tion made to them by the Arizona Trust Com-*
pany and the Arizona Mutual Savings and Loan
Association: 1. To the effect that in April, 1911,
\$130,000 worth of the assets of the Arizona Mu-
tual Savings and Loan Association had been in
fact lawfully transferred to and had become the
property of the defendant Arizona Trust Com-
pany. 2. That if the said petitioners would sur-
render their said stock in the Arizona Mutual
Savings and Loan Association in exchange for
preferred stock in the defendant Arizona Trust
Company, your said petitioners so exchanging
their said Loan Association stock would receive
rights, privileges and benefits in the Arizona
Trust Company which were the same as and iden-
126 tical with the rights, privileges and benefits which
your said petitioners had enjoyed as stockhold-
ers in the said Arizona Mutual Savings and Loan
Association. 3. That as and when the said de-
fendant Trust Company acquired the assets of
the said Arizona Mutual Savings and Loan Asso-
ciation, the said defendant Trust Company would
continue to care for the investment of those of
your petitioners who exchanged their stock in the
Arizona Mutual Savings and Loan Association
for stock in the Arizona Trust Company, as afore-
said, without charge or expense either against

any of your said petitioners, or against the said 127
 Arizona Mutual Savings and Loan Association.
 But your said petitioners allege the fact to be that
 each and all of said representations were wholly
 false and untrue, and that in fact the assets of the
 said Arizona Mutual Savings and Loan Associa-
 tion have not yet been transferred of record to
 the said defendant Trust Company, although the
 said defendant Trust Company has at all times
 since April, 1911, exercised complete dominion
 and control over said assets. And, moreover,
 that when your said petitioners received their cer-
 tificates of stock in the Arizona Trust Company
 in Exchange for their stock in the Arizona Mu-
 tual Savings and Loan Association, your said 128
 petitioners ascertained and discovered that the
 stock in the Arizona Trust Company was not in
 any way similar to the stock which they had sur-
 rendered in the Arizona Mutual Savings and
 Loan Association, and that the representations
 made to your said petitioners by the said Trust
 Company and its officers were in this respect
 wholly false and untrue. And your said peti-
 tioners further allege that since April, 1911, the
 defendant Arizona Trust Company has charged
 the expense of operating and maintaining the
 said defendant Trust Company against the Ari-
 zona Mutual Savings and Loan Association and
 the assets thereof, and that the said representa- 129
 tions made to your said petitioners by the said de-
 fendant Trust Company, its officers and agents,
 in this respect was wholly false and untrue.

5. That said representations and each of them
 were false and untrue and that the defendant
 Trust Company, its officers and agents, well knew
 when such representations were made, as afore-
 said, that such representations, and each of them,
 were false and untrue, and that said representa-
 tions made by the defendant Trust Company, its

130 officers and agents who then and there occupied a position of trust and confidence towards your said petitioners, were well calculated to deceive your said petitioners, and that said representations and each of them were so made, as aforesaid, with intent and for the purpose of inducing your said petitioners and others to rely upon and believe said representations and each of them to be true, and to act upon said representations and each of them accordingly. And that your said petitioners, and each of them, in ignorance of the falsity of said representations, and believing them to be true, and reposing faith and reliance in the said defendant Trust Company, its officers and
 131 agents, relied upon said representations and each of them exclusively and solely by reason thereof were induced to and did surrender their said stock in the Arizona Mutual Savings and Loan Association in exchange for stock in the defendant Arizona Trust Company.

6. And your said petitioners, as stockholders in the said defendant Trust Company, further allege that at all times since the organization of the defendant Trust Company, to-wit, about March 21, 1911, the management of said trust company has been wasteful, extravagant, dishonest and incompetent.

132 That until about June 21, 1912, one A. J. Edwards was the vice-president of the defendant Trust Company. That he dominated and controlled the policy and entire management of both of the defendants for a considerable period of time, if not during the whole interval between April, 1911, and June 21, 1912. That said A. J. Edwards claimed to be the owner of three hundred shares of the common stock of the defendant Trust Company which constituted a majority, if not the whole, of the common stock of the said Trust Company outstanding, from the date of its

organization until the present time, except ten 133
 additional shares of said common stock. That
 the said A. J. Edwards acquired the said three
 hundred shares of the common stock of the de-
 fendant Trust Company unlawfully and without
 any valid or legal consideration therefor. But
 that notwithstanding said fact, the said A. J. Ed-
 wards voted or caused to be voted the said stock
 in his own favor and caused a salary of about
 four hundred dollars a month to be awarded to
 himself as an officer and director of said defend-
 ant Trust Company. And your petitioners allege
 that the said salary was extravagant and wasteful
 and that the services of the said A. J. Edwards
 were not worth to the said company or to its 134
 stockholders other than the said Edwards four
 hundred dollars per month, or any other sum.

That your said petitioners are informed and
 verily believe that the wife of the said A. J. Ed-
 wards was known as J. O. Edwards, and that the
 father of the said A. J. Edwards was also known
 as J. O. Edwards. And in this connection your
 petitioners allege, upon information and belief,
 that through the medium of J. O. Edwards, either
 the wife or father of the said A. J. Edwards, the
 said A. J. Edwards caused the defendant Trust
 Company to acquire an interest in various prop-
 erties, among others, the property in which said
 defendant Trust Company now has and maintains 135
 its office at the northwest corner of Second Ave-
 nue and Washington Street, in the city of Phoe-
 nix, Arizona, and that said J. O. Edwards
 contracted to buy the said property for the
 sum of fifty thousand dollars, and caused to
 be paid on account of the purchase price there-
 of the sum of only seven or eight thousand
 dollars, and then within a very short period
 of time thereafter, the exact period of time being
 unknown to your petitioners, the said A. J. Ed-
 wards caused said property to be bought by the

136 said Trust Company for the price of eighty thousand dollars. And your petitioners further allege that, although not more than eight thousand dollars was paid by some one on account of the purchase price of said property, and although the said property is subject to a mortgage of about forty-three thousand dollars, the defendant Trust Company claims to have an equity therein of thirty-seven thousand dollars, and now carries said property upon their books as an asset valued at eighty thousand dollars. But it appears from Schedule A of assets of the said defendant Trust Company, which said defendant caused to be filed with Arizona Corporation Commission
 137 on or about June 15, 1912, that the following statement is made—balance to be paid February 1, 1913. Deed to be delivered. Mortgage \$35,000, five years from January 1, 1912, at 7%. Deed and mortgage in escrow, carried as real estate. Contracts purchase estimated equity \$37,000.”

And your said petitioners allege in this connection that between the date of purchase of said property in the name of J. O. Edwards for the price of fifty thousand dollars, and the date of pretended sale thereof to the Trust Company for the price of eighty thousand dollars, there was in fact no change or increase whatever in the actual value of said property, and that said increase is and was
 138 wholly fictitious.

And your said petitioners further allege that by the same or similar methods the said A. J. Edwards caused about 160 acres of land known as the Evans property and situated north of the city of Phoenix, to be bought for about \$200 per acre, and almost immediately thereafter caused the same to be sold to or acquired by the defendant Trust Company at the price of \$400 per acre, and that there was in fact no increase in the value thereof between such sales.

And your said petitioners further allege that

the said A. J. Edwards and others associated with him used the assets and properties derived from the defendant Loan Association solely for their own benefit and in utter disregard of the interests of your petitioners or of the rights of the stockholders of the defendant Loan Association. That as evidence of this your petitioners allege that in November, 1911, the said A. J. Edwards and others associated with him, then being in absolute and complete control of the affairs of the said defendant Trust Company, as well as the affairs of the defendant Loan Association, caused the defendant Trust Company to agree to buy 185 shares, of the par value of \$100 each, of the capital stock of a corporation known as the Farmers & Merchants Bank of Phoenix, which institution then, or shortly thereafter, was in a failing condition, for which stock the said defendant Trust Company agreed to pay the price of \$18,500, which purchase price said Trust Company agreed to pay either in cash or in real estate securities equivalent in value. That thereafter the defendant Trust Company attempted to perform said contract by the delivery of certain real estate securities, which securities, however, were in fact derived by said Trust Company from the said defendant Loan Association, which securities were of the approximate value of \$18,500, and thereupon the defendant Trust Company, claiming to own and to have acquired by such purchase 185 shares of stock in said Farmers & Merchants Bank, proceeded to vote the same and to elect to the directorate of the said Farmers & Merchants Bank the said A. J. Edwards, together with his other associates. And shortly thereafter, so much of said transaction as involved the delivery of the said \$18,500 worth of securities of the said defendant Loan Association to the said Farmers & Merchants Bank was declared illegal by the then auditor of the late territory of Arizona, and there-

142 upon the said securities were redelivered to the
said Trust Company, and almost immediately
thereafter the said Farmers & Merchants Bank
suspended business, closed its doors and became
wholly insolvent. That said transaction could by
no possibility have been and in fact was not of
the slightest benefit or advantage to the stock-
holders of the defendant Loan Association, whose
assets were used in said transaction, or of any
benefit to the stockholders of the defendant Trust
Company. But, on the contrary, the said trans-
action was made and entered into solely for the
benefit and personal advancement of the said A.
J. Edwards at the sacrifice of the rights and in-
143 terests of your said petitioners and of the stock-
holders in the said defendant Loan Association.
And in this connection your petitioners allege
that as a result of said transaction there is now
pending in the Superior Court of the State of Ari-
zona, in and for the County of Maricopa, an
action wherein the said Farmers & Merchants
Bank is plaintiff and the said defendant, Arizona
Trust Company, is defendant, which said action
is brought to recover the sum of \$18,500 in cash
from said defendant Trust Company by reason of
the contract heretofore set forth. From all of
which your petitioners allege that the assets and
properties in which they have an interest, either
144 as stockholders in the said defendant Trust Com-
pany, or in the defendant Loan Association, have
been and are wasted and depleted by reason of
the matters herein set forth.

And your petitioners further allege that during
the period aforesaid in which the said A. J. Ed-
wards had and exercised complete control of the
affairs of said Trust Company, the said Edwards
caused a young man named Olsen to occupy the
titular position of secretary of the defendant Loan
Association, while at the same time said Olsen
was acting as secretary of the defendant Trust

Company. That said A. J. Edwards caused said 145
Olsen, who was at all times completely under the
domination and control of the said A. J. Edwards,
to sign and circulate and disseminate among the
stockholders of the defendant Loan Association,
by means of the United States mail, much evasive
and deceitful literature, calculated to deceive, and
which in fact did deceive your petitioners in many
particulars. That said Edwards dictated most,
if not all of the minutes of the alleged directors'
and stockholders' meetings of both the Companies
and caused the said Olsen to subscribe thereto as
occasion required. That said Olsen as secretary
of the defendant Loan Association is charged 146
with the duty of having in his custody the books
and valuable papers and records of the defendant
Loan Association, but by reason of his position
as secretary of the defendant Trust Company and
by reason of his present control by the officers of
the defendant Trust Company he is wholly unfit
to protect and is in fact wilfully disregarding the
rights of the stockholders of the defendant Loan
Association by assisting the present officers and
directors of the defendant Loan Association to
complete the transfer of the assets of the defend-
ant Loan Association to the said defendant Trust
Company. That since April, 1911, the defendant
Loan Association has entirely suspended its busi- 147
ness and ceased to be a going concern as a sav-
ings and loan company and has even entered into
a contract with the defendant Trust Company
that it would cease business for a period of two
years from April, 1911, would not compete in
business with the said defendant Trust Company.
That in fact, the defendant Loan Association
maintains no office whatever of its own, but the
officers and directors of the defendant Trust Com-
pany assert that the office of the defendant Loan
Association is in the same office as that occupied
by the said defendant Trust Company.

148 7. That on or about June 20 or 21, 1912, there was and is now pending before the Arizona Corporation Commission the application of the defendant Trust Company for a certificate authorizing it to do business and engage in the sale of its stock. Upon information and belief your petitioners allege that about six o'clock in the evening of June 21, 1912, the said A. J. Edwards was subpoenaed to appear before the said Corporation Commission and to testify concerning the matters relating to said Arizona Trust Company on June 21, 1912. That when the said subpoena was served upon the said A. J. Edwards he was still
149 and in complete control thereof, but during the night-time the said A. J. Edwards sold, or pretended to sell, or transfer, to one W. T. Smith and one Dunlap and one J. Wesley Walker, the pretended interest of the said A. J. Edwards in and to the 300 shares of the common stock of the said Trust Company, and thereupon and during the night-time, as aforesaid, the said Smith assumed the presidency of the said defendant Trust Company and the said Dunlap assumed to become one of the officers thereof, and the said Walker remained and still remains as an undisclosed principal thereof. And thereupon the said Edwards,
150 after a brief examination before the said Corporation Commission on June 21, 1912, departed from the state of Arizona, and has not to the knowledge of your petitioners returned, and your petitioners believe that the said A. J. Edwards has fled from the jurisdiction of the courts of Arizona.

And your petitioners further allege in this connection that the issue before the said Corporation Commission with reference to the said application of the said Arizona Trust Company involves an inquiry as to the present solvency of the said defendant Trust Company, and that up to the present time the said Corporation Commission

has not granted the said defendant Trust Com- 151
pany any leave or permission authorizing it to
proceed with its said business as desired.

8. And your petitioners further allege that as
a result of the said representations made to your
said petitioners, as aforesaid, your said petition-
ers and many others, surrendered their stock in
the said defendant Loan Association for stock in
the said Trust Company, as aforesaid, and that
under the direction of the said Edwards, the con-
summation of the sale of all of the assets of the
said Loan Association in exchange for said 130,-
000 shares of preferred stock in the defendant
Trust Company was prolonged and continued 152
until sometime in September or November, in the
year 1911, and until such time as the defendant
Trust Company had acquired about eighty-five
per cent of the said stock in the defendant Loan
Association heretofore owned, among others, by
your said petitioners, and thereupon, to-wit, in or
about November, 1911, after both of said corpor-
ate defendants had announced the completion and
consummation of the purchase of the defendant
Loan Association's assets by the defendant Trust
Company for the consideration aforesaid, and
after your petitioners as stockholders of the de-
fendant Loan Association, among others, had
acted upon said representations and had sur- 153
rendered or assigned their said stock to the de-
fendant Trust Company in exchange for its stock,
the said defendant Trust Company voted the
stock so acquired by it and purported and at-
tempted to repudiate the whole transaction relat-
ing to said purchase of the assets of the said de-
fendant Loan Association, and attempted to sub-
stitute in its place and stead a wholly different
contract than that which had been agreed upon by
both companies and acted upon by your petition-
ers, and a large number of stockholders similarly

154 situated. And that it is now difficult, if not impossible, to determine the exact status of the affairs of either or both companies until there can be a judicial inquiry into the same, and that due to the confusion and intermingling of the assets of the two corporations, and the creation of reciprocal equities in favor of your said petitioners as former stockholders in the defendant Loan Association, who have been induced through fraud and misrepresentations as aforesaid, to surrender their rights therein and to acquire stock in the defendant Trust Company, the rights of your petitioners can only be protected by and through this Honorable Court and by extending to your
155 said petitioners the right and privilege to intervene in the above entitled cause.

9. Upon information and belief your petitioners allege the fact to be that the defendant Arizona Trust Company is now wholly insolvent and unable to meet and discharge the various obligations which it has assumed, and that your petitioners have no other adequate remedy at law to redress the wrongs and grievances herein set forth, except in a court of equity, and in the above entitled cause.

156 Wherefore, your petitioners and each of them respectfully pray this Honorable Court:

1. That they and each of them may be permitted to intervene in the above entitled cause and join in the prayer of the complainant therein.

2. Your petitioners and each of them, who are stockholders in the defendant, Arizona Trust Company, pray that the transaction whereby said petitioners assigned and transferred their stock in the defendant Arizona Mutual Savings and Loan Association for stock in the defendant Ari-

zona Trust Company may be rescinded and de- 157
clared to be of no force and effect.

3. And that a restitution or re-assignment to the said petitioners of the stock in the Arizona Mutual Savings and Loan Association so transferred by them, and each of them, to the defendant Trust Company be adjudged and decreed and that the cancellation of the certificates of stock received by said petitioners from the said Trust Company as aforesaid may be ordered.

4. And that it be adjudged and determined that the transaction whereby your petitioners gave up their said stock in the defendant Loan 158
Association for stock in the defendant Trust Company, is wholly void and of no effect.

5. And further, that the defendant Trust Company be required to make complete restitution of all of the properties heretofore received by it from the defendant Arizona Mutual Savings and Loan Association, together with the interest and income thereon; and

6. That said restitution be made to the receiver which your petitioners pray this court to appoint for the purpose of preserving and taking into his possession all of the assets of both of said 159
defendants.

And to the end that full and complete justice and equity may be done between all of the parties hereto and under the well settled rule in equity in such cases provided, that where the court assumes jurisdiction of the matters in controversy for one purpose, such jurisdiction will be exercised for all purposes, and to the further end that by permitting your said petitioners to intervene herein and have their rights herein adjudged and determined by this Honorable Court, a multi-

160 plicity of suits against said defendant Trust Company may thereby be avoided.

7. That an accounting between both of said defendant companies be had, as well as an accounting between the said defendants and their respective stockholders. And that a master be appointed to take proofs of the facts herein alleged and to determine the rights and equities of all of the parties concerned therein, and that the affairs of both companies be wound up, their assets marshaled and distributed, and to whomsoever may be adjudged to be entitled thereto.

161 8. And that your petitioners have such other and further and different relief as to the court may seem meet and proper in the premises.

9. And together with the costs and disbursements in this action expended.

WILLIAM M. SEABURY,
Solicitor for Petitioners.

162 UNITED STATES OF AMERICA,)
DISTRICT OF ARIZONA,) ss.
STATE OF ARIZONA,)
COUNTY OF MARICOPA.)

William M. Seabury, being duly sworn, says: That he is a solicitor of this court. That he is the solicitor for the petitioners above named. That he has read the foregoing petition and knows the contents thereof. That the allegations therein contained, as far as they relate to his own acts, are true, and as far as they relate to the acts of others he believes them to be true. That in regard to all matters and things in the fore-

going petition alleged which are not within the 163
 personal knowledge of this deponent, the deponent
 has been fully informed and he believes that the
 same are true. That the reason why this petition
 is not verified by the petitioners herein and is ver-
 ified by the deponent, is that many of the said
 petitioners are absent from the county of Mari-
 copa where deponent resides and are inaccessible
 to deponent, and by reason of the great number of
 petitioners interested herein it becomes and is
 impractical to have said petition verified by each
 of said petitioners in person. And that the facts
 in said petition alleged are peculiarly within the
 knowledge of deponent as obtained by him from
 examinations, personally conducted by him, of the 164
 records on file before the Arizona Corporation
 Commission in connection with the application of
 the Arizona Trust Company for a certificate
 authorizing it to transact business in the state of
 Arizona, and from all the testimony which de-
 ponent has heard relating to the subject matter
 herein involved, and from communications re-
 ceived by deponent from many other stockhold-
 ers in the defendants above named and from other
 sources of information.

Subscribed and sworn to before me, this.....
 day of July, A. D. 1912.

165

Notary Public.
 My commission expires February 15, 1916.

IN THE

167

CHARLES W. CLARK,
Complainant,
vs.
ARIZONA MUTUAL SAVINGS
AND LOAN ASSOCIATION,
and the Arizona Trust Com-
pany,
Defendants.

In Equity.

No.

INTERVENING PETITION No. 2.

The petition of Harry E. Harter, H. S. Gray, Mary E. Ellsworth, L. M. Gustafson, A. H. Ferrin, Lucy H. Purdum, H. P. Wightman, A. C. Lockwood, Alex Anderson, D. Bohm, Erit Equist, A. H. Oeltjen, E. L. Hosler, S. L. Hosler, Glenn W. Morse, N. G. Tang Fong, E. A. Gillard, J. C. Wilhelm, Frank A. Moss, George K. Anderson, J. D. LaChance, Grace Langston, Frank A. Flickinger, Charles J. Petterson, E. F. Stabler, Nettie Sheldon, Lloyd C. Henning, Wilson Patterson, E. W. Clayton, William C. Faulkner, Walter W. Williams, J. N. Stratton, W. E. Platt, John F. Weber, S. L. Ijams, Ida N. Frye, William Sobey, William Whalley, O. W. Miller, William H. Watts, Globe Lumber Company, Alfred Hansen, Clara F. Bloom, nee Clara Ferrin, Orville Young, Fred W. Horn, J. C. Bradley, Mary Bleak, Oliver Meyers, J. W. McLean, intervenors herein, through their attorney and solicitor, William M. Seabury, respectfully alleges and shows to this Honorable Court :

That heretofore and on July 15, 1912, there was filed in this Honorable Court a bill of complaint in equity, wherein one Charles W. Clark was complainant and the Arizona Mutual Savings and Loan Association and the Arizona Trust Company were defendants; that said suit and controversy was brought by the complainant above named on behalf of himself and all others similarly situated as stockholders in the defendant Arizona Mutual Savings and Loan Association and for the relief prayed for in said bill; and thereafter, and to-wit, on or about July 15, and after the jurisdiction of this court had attached with reference to the cause of the said complainant and the subject matter therein involved, a certain petition in intervention was filed herein by certain petitioners claiming to occupy a position similar to that of the complainant above named; and thereafter, and on or about August 5, 1912, the said intervening petitioners received authority and permission from this Honorable Court so to intervene and to prosecute their rights herein, and that the above entitled cause is still pending undetermined herein and is not yet at issue upon the pleadings of said first petition in intervention and the answer, demurrer or plea to be interposed thereto. 170 171

II.

That the petitioners named in this paragraph are now and at all times since April 1, 1911, have been stockholders in the defendant Arizona Mutual Savings and Loan Association and have paid into said Arizona Mutual Savings and Loan Association on account of the purchase price of their said stock the respective sums set opposite the names of each such stockholders, as follows:

172	Harry E. Harter.....	\$ 168.00
	H. S. Gray.....	570.00
	Mary E. Ellsworth	560.00
	L. M. Gustafson.....	500.00
	A. H. Ferrin.....	288.00
	Lucy H. Purdum.....	144.00
	H. P. Wightman.....	450.00
	A. C. Lockwood.....	472.82
	Alex Anderson	675.00
	D. Bohn	600.00
	Erit Equist	450.00
	A. H. Oeltjen.....	252.00
	Mary Bleak	72.00
173	Total	\$5,201.82

III.

That each and all of the other petitioners hereinbefore named were, prior to April, 1911, stockholders in the defendant Arizona Mutual Savings and Loan Association, but since April, 1911, each of said persons have become and now are stockholders in the defendant Arizona Trust Company, and have paid in as a total to both of said companies the amounts set opposite the names of each of such stockholders, respectively, as follows:

174	E. L. Hosler.....	\$ 390.00
	S. L. Hosler.....	264.00
	Glenn W. Morse.....	324.00
	N. G. Tang Fong.....	192.00
	A. E. Gillard.....	504.00
	J. C. Wilhelm.....	210.00
	Frank A. Moss.....	252.00
	Geo. K. Anderson.....	504.00
	J. D. LaChance.....	180.00
	Grace Langston	600.00
	Frank A. Flickinger.....	280.00
	Charles J. Petterson.....	270.00

E. F. Stabler.....	458.00	175
Nettie Sheldon	282.00	
Lloyd C. Henning.....	210.00	
E. W. Clayton.....	864.00	
William C. Faulkner.....	1,000.00	
Walter W. Williams.....	402.00	
J. N. Stratton.....	204.00	
W. E. Platt.....	204.00	
John F. Weber.....	192.00	
S. G. Ijams.....	300.00	
Ida N. Frye.....	600.00	
William Sobey.....	318.00	
William Whalley	318.00	
O. W. Miller.....	354.00	
William H. Watts.....	1,680.00	176
Globe Lumber Co.....	899.10	
Alfred Hansen	552.00	
Clara F. Bloom, nee Clara Ferrin.....	318.00	
Orville Young	204.00	
Fred M. Horn	285.00	
J. C. Bradley.....	300.00	
Oliver Meyers	180.00	
J. W. McLean.....	600.00	
<hr/>		
Arizona Trust Company Total.....	\$14,964.10	
Arizona Mutual Savings & Loan		
Association Total	5,201.82	
<hr/>		
Total.....	\$20,165.90	177

That each and all of your petitioners named in this petition both in Paragraph II and Paragraph III hereof, desire to intervene in the above entitled cause in support of the allegations contained in the complainant's bill heretofore filed herein and in the first intervening petition filed herein on or about July 15, 1912, to the end that the rights of your said petitioners and each of them in connection with each and all of the matters set forth in said complainant's bill and in

178 said first intervening petition may be protected and may be submitted to the jurisdiction of this court, by it to be dealt with in accordance with law and equity and the rules and practice of this Honorable Court.

And in this connection, your said petitioners and each of them, in support of this, their petition of intervention herein, beg leave to refer to and make a part hereof, as though set forth at length, each and every paragraph of complainant's bill of complaint herein, save and except so much of Paragraph Three thereof as relates exclusively to the complainant herein, and also, your said petitioners and each of them beg leave to adopt and
 179 make a part hereof, as though set forth at length herein, each and every allegation and paragraph contained in the said first petition of intervention filed herein on or about July 15, 1912, except Paragraphs One, Two and Three of said first intervening petition, and each of your said petitioners hereby re-aver and re-allege, as though set forth at length herein, each and every such allegation contained in said bill and in said first intervening petition, as though the same were set out at length herein;

That said petitioner, Globe Lumber Company, is a corporation duly organized and existing under the laws of Arizona, having its principal office
 180 and place of business at the City of Globe, Gila County, Arizona.

WHEREFORE, your petitioners and each of them respectfully adopt and hereby pray in accordance with the form of complainant's bill herein, and further:

1. That they and each of them may be permitted to intervene in the above entitled cause and join in the prayer of the complainant therein.

2. Your petitioners and each of them, who are

stockholders in the defendant, Arizona Trust Company, pray that the transaction whereby said petitioners assigned and transferred their stock in the defendant Arizona Mutual Savings and Loan Association for stock in the defendant Arizona Trust Company may be rescinded and declared to be of no force and effect. 181

3. And that a restitution or re-assignment to the said petitioners of the stock in the Arizona Mutual Savings and Loan Association so transferred by them, and each of them, to the defendant Trust Company be adjudged and decreed and that the cancellation of the certificates of stock received by said petitioners from the said Trust Company as aforesaid may be ordered. 182

4. And that it be adjudged and determined that the transaction whereby your petitioners gave up their said stock in the defendant Loan Association for stock in the defendant Trust Company, is wholly void and of no effect.

5. And further that the defendant Trust Company be required to make complete restitution of all the properties heretofore received by it from the defendant Arizona Mutual Savings and Loan Association, together with the interest and income thereon; and 183

6. That said restitution be made to the receiver which your petitioners pray this court to appoint for the purpose of preserving and taking into his possession all of the assets of both of said defendants.

And to the end that full and complete justice and equity may be done between all of the parties hereto and under the well settled rule in equity in such cases provided, that where the court assumes jurisdiction of the matters in controversy

184 for one purpose, such jurisdiction will be exercised for all purposes, and to the further end that by permitting your said petitioners to intervene herein and have their rights herein adjudged and determined by this Honorable Court, a multiplicity of suits against said defendant Trust Company may thereby be avoided.

7. That an accounting between both of said defendant companies be had, as well as an accounting between the said defendants and their respective stockholders. And that a master be appointed to take proofs of the facts herein alleged and to determine the rights and equities of
 185 all of the parties concerned therein, and that the affairs of both companies be wound up, their assets marshaled and distributed, and to whomsoever may be adjudged to be entitled thereto.

8. And that your petitioners have such other and further relief as to the court may seem meet and proper in the premises.

9. And together with the costs and disbursements in this action expended.

186 WILLIAM M. SEABURY,
 306 Fleming Bldg., Phoenix, Arizona,
 Solicitor for Petitioners.

UNITED STATES OF AMERICA, }
 DISTRICT OF ARIZONA, } ss.
 STATE OF ARIZONA, }
 COUNTY OF MARICOPA. }

William M. Seabury, being duly sworn says:
 That he is a solicitor of this court. That he is
 the solicitor for the petitioners above named.

That he has read the foregoing petition and 187
 knows the contents thereof. That the allegations
 therein contained, as far as they relate to his own
 acts, are true, and as far as they relate to the acts
 of others he believes them to be true. That in
 regard to all matters and things in the foregoing
 petition alleged which are not within the personal
 knowledge of this deponent, the deponent has
 been fully informed and he believes that the same
 are true. That the reason why this petition is not
 verified by the petitioners herein and is verified by
 the deponent, is that many of the said petitioners
 are absent from the county of Maricopa, where
 deponent resides and are inaccessible to deponent,
 and by reason of the great number of petitioners 188
 interested herein it becomes and is impractical to
 have said petition verified by each of said peti-
 tioners in person. And that the facts in said peti-
 tion alleged are peculiarly within the knowledge
 of deponent as obtained by him from examina-
 tions, personally conducted by him, of the records
 on file before the Arizona Corporation Commis-
 sion in connection with the application of the
 Arizona Trust Company for a certificate author-
 izing it to transact business in the state of Ari-
 zona, and from all the testimony which deponent
 has heard relating to the subject matter herein
 involved, and from communications received by 189
 deponent from many other stockholders in the de-
 fendants above named and from other sources of
 information.

W. M. SEABURY.

Subscribed and sworn to before me this.....
 day of August, A. D. 1912.

G. M. FORBES,
 Notary Public.

(My commission expires.....)

EXHIBIT 4.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK,	}	
Complainant,		
vs.		
ARIZONA MUTUAL SAVINGS		
AND LOAN ASSOCIATION,		
and the Arizona Trust Com-		
pany,		
Defendants.		

In Equity.

No.

191

INTERVENING PETITION No. 3.

The petition of George S. Hughes, Mrs. W. J. Jackson, Joseph Carpenter and John Stiegler, intervenors herein, through their attorney and solicitor, William M. Seabury, respectfully alleges and shows to this Honorable Court:

I.

192 That heretofore and on July 15, 1912, there was filed in this Honorable Court a bill of complaint in equity, wherein one Charles W. Clark was complainant and the Arizona Mutual Savings and Loan Association and the Arizona Trust Company were defendants; that said suit and controversy was brought by the complainant above named on behalf of himself and all others similarly situated as stockholders in the defendant Arizona Mutual Savings and Loan Association and for the relief prayed for in said bill; and thereafter, and to-wit, on or about July 15, and after the jurisdiction of this court had attached

with reference to the cause of the said complain- 193
ant and the subject matter therein involved, a
certain petition in intervention was filed herein
by certain petitioners claiming to occupy a posi-
tion similar to that of the complaint above
named; and thereafter and on or about August
5, 1912, the said intervening petitioners received
authority and permission from this Honorable
Court so to intervene and to prosecute their rights
herein, and that the above entitled cause is still
pending undetermined herein.

II.

That the petitioners named in this paragraph 194
are now and at all times since April 1, 1911, have
been stockholders in the defendant Arizona Mu-
tual Savings and Loan Association and have paid
into said Arizona Mutual Savings and Loan As-
sociation on account of the purchase price of their
stock the respective sums set opposite the names
of each such stockholders, as follows:

George S. Hughes.....	\$ 288.00
Mrs. W. J. Jackson.....	150.00

III.

That each and all of the other petitioners here- 195
inbefore named were, prior to April, 1911, stock-
holders in the defendant Arizona Mutual Sav-
ings and Loan Association, but since April, 1911,
each of said persons have become and now are
stockholders in the defendant Arizona Trust
Company, and have paid in as a total to both of
said companies the amounts set opposite the
names of each of such stockholders respectively,
as follows:

Joseph Carpenter	\$ 216.00
John Stiegler	463.85

EXHIBIT 4.

IN THE

District Court of the United States
FOR THE DISTRICT OF ARIZONA.

191	<div style="display: flex; justify-content: space-between;"> <div style="width: 65%;"> <p>CHARLES W. CLARK, Complainant, vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION, and the Arizona Trust Com- pany, Defendants.</p> </div> <div style="width: 30%; font-size: 4em; line-height: 1; padding: 0 10px;">}</div> <div style="width: 5%;"> <p>In Equity. No.</p> </div> </div>
-----	---

INTERVENING PETITION No. 3.

The petition of George S. Hughes, Mrs. W. J. Jackson, Joseph Carpenter and John Stiegler, intervenors herein, through their attorney and solicitor, William M. Seabury, respectfully alleges and shows to this Honorable Court:

I.

192 That heretofore and on July 15, 1912, there was filed in this Honorable Court a bill of complaint in equity, wherein one Charles W. Clark was complainant and the Arizona Mutual Savings and Loan Association and the Arizona Trust Company were defendants; that said suit and controversy was brought by the complainant above named on behalf of himself and all others similarly situated as stockholders in the defendant Arizona Mutual Savings and Loan Association and for the relief prayed for in said bill; and thereafter, and to-wit, on or about July 15, and after the jurisdiction of this court had attached

with reference to the cause of the said complain- 193
 ant and the subject matter therein involved, a
 certain petition in intervention was filed herein
 by certain petitioners claiming to occupy a posi-
 tion similar to that of the complaint above
 named; and thereafter and on or about August
 5, 1912, the said intervening petitioners received
 authority and permission from this Honorable
 Court so to intervene and to prosecute their rights
 herein, and that the above entitled cause is still
 pending undetermined herein.

II.

That the petitioners named in this paragraph 194
 are now and at all times since April 1, 1911, have
 been stockholders in the defendant Arizona Mu-
 tual Savings and Loan Association and have paid
 into said Arizona Mutual Savings and Loan As-
 sociation on account of the purchase price of their
 stock the respective sums set opposite the names
 of each such stockholders, as follows:

George S. Hughes.....	\$ 288.00
Mrs. W. J. Jackson.....	150.00

III.

That each and all of the other petitioners here-
 inbefore named were, prior to April, 1911, stock- 195
 holders in the defendant Arizona Mutual Sav-
 ings and Loan Association, but since April, 1911,
 each of said persons have become and now are
 stockholders in the defendant Arizona Trust
 Company, and have paid in as a total to both of
 said companies the amounts set opposite the
 names of each of such stockholders respectively,
 as follows:

Joseph Carpenter	\$ 216.00
John Stiegler	463.85

202 And to the end that full and complete Justice and equity may be done between all of the parties hereto and under the well-settled rule in equity in such cases provided, that where the court assumes jurisdiction of the matters in controversy for one purpose, such jurisdiction will be exercised for all purposes, and to the further end that by permitting your said petitioners to intervene herein and have their rights herein adjudged and determined by this Honorable Court, a multiplicity of suits against said defendant Trust Company may thereby be avoided,

203 7. That an accounting between both of said defendant companies be had, as well as an accounting between the said defendants and their respective stockholders, and that a master be appointed to take proofs of the facts herein alleged and to determine the rights and equities of all of the parties concerned therein, and that the affairs of both companies be wound up, their assets marshaled and distributed, and to whomsoever may be adjudged to be entitled thereto.

8. And that your petitioners have such other and further and different relief as to the court may seem meet and proper in the premises.

204 9. And together with the costs and disbursements in this action expended.

WILLIAM M. SEABURY,
306 Fleming Bldg.,
Phoenix, Arizona.
Solicitor for Petitioners.

UNITED STATES OF AMERICA, }
DISTRICT OF ARIZONA, } ss:
COUNTY OF MARICOPA. }

WILLIAM M. SEABURY, being duly sworn, says:

That he is a solicitor of this court. That he is 205
the solicitor for the petitioners above named. That
he has read the foregoing petition and knows the
contents thereof. That the allegations therein
contained, as far as they relate to his own acts,
are true, and as far as they relate to the acts of
others he believes them to be true. That in regard
to all matters and things in the foregoing petition
alleged which are not within the personal know-
ledge of this deponent, the deponent has been fully
informed and he believes that the same are true.
That the reason why this petition is not verified
by the petitioners herein and is verified by the de-
ponent, is that all of the said petitioners are absent 206
from the county of Maricopa where deponent re-
sides and are inaccessible to deponent, and by
reason of the great number of petitioners inter-
ested herein it becomes and is impractical to have
said petition verified by each of said petitioners
in person. And that the facts in said petition al-
leged are peculiarly within the knowledge of de-
ponent as obtained by him from examinations,
personally conducted by him, of the records on
file before the Arizona Corporation Commission
in connection with the application of the Arizona
Trust Company for a certificate authorizing it to
transact business in the State of Arizona, and
from all the testimony which deponent has heard 207
relating to the subject matter herein involved, and
from communications received by deponent from
many other stockholders in the defendants above
named and from other sources of information.

W. M. SEABURY.

Subscribed and sworn to before me, this.....
day of September, A. D. 1912.

O. E. SCHUPP,
Notary Public.

My commission expires February 15, 1916.

EXHIBIT 5.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

209	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>CHARLES W. CLARK, Complainant, vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION, and the Arizona Trust Com- pany, Defendants.</p> </div> <div style="width: 5%; text-align: center;">}</div> <div style="width: 35%;"> <p>In Equity. No.</p> </div> </div>
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INTERVENING PETITION No. 4.

210 The petition of Ramon Brenna, C. R. Freeman,
 M. A. Ramirez, E. J. Brunenkant, C. Brunenkant,
 Thomas Weedon, Frederick E. White, Frederick
 E. White, assignee of Ah Lee, Sam Y. Barkley,
 Mrs. J. N. Russell, Cora Dunagan, Helen Weber,
 W. E. Young, Mrs. M. L. Graves, Mrs. W. S.
 Hurst, Mrs. C. S. Brown, Maria B. Stevens, A.
 T. Kleinschmidt, Lysander Cassidy, Rosario C.
 Brenna, A. J. Durago, H. Capin, L. C. Frederico
Gallin,
 interveners herein, through their attorneys and
 solicitor, William M. Seabury, respectfully alleges
 and shows to this Honorable Court:

I.

That heretofore and on July 15, 1912, there was
 filed in this Honorable Court a bill of complaint in
 equity, wherein one Charles W. Clark was com-
 plainant and the Arizona Mutual Savings and
 Loan Association and the Arizona Trust Com-

pany were defendants; that said suit and contro- 211
 versy was brought by the complainant above
 named on behalf of himself and all others simi-
 larly situated as stockholders in the defendant
 Arizona Mutual Savings and Loan Association
 and for the relief prayed for in said bill; and there-
 after, and to-wit, on or about July 15, and after
 the jurisdiction of this court had attached with
 reference to the cause of the said complaint and
 the subject matter therein involved, a certain pe-
 tition in intervention was filed herein by certain
 petitioners claiming to occupy a position similar
 to that of the complainant above named; and
 thereafter and on or about August 5, 1912, the
 said intervening petitioners received authority 212
 and permission from this Honorable Court so to
 intervene and to prosecute their rights herein, and
 that the above entitled cause is still pending un-
 determined herein.

II.

That the petitioners named in this paragraph
 are now and at all times since April 1, 1911, have
 been stockholders in the defendant Arizona
 Mutual Savings and Loan Association and have
 paid into said Arizona Mutual Savings and Loan
 Association on account of the purchase price of
 their said stock the respective sums set opposite 213
 the names of each such stockholders as follows:

Ramon Brenna	\$ 180.00
Lysander Cassidy	250.00
	<hr/>
Total	\$ 430.00

III.

That each and all of the other petitioners here-
 inbefore named were, prior to April, 1911, stock-

214 holders in the defendant Arizona Mutual Savings and Loan Association, but since April, 1911, each of said persons have become and now are stockholders in the defendant Arizona Trust Company, and have paid in as a total to both of said companies the amounts set opposite the names of each of such stockholders respectively, as follows:

	C. R. Freeman	\$ 312.00
	M. A. Ramirez.....	216.00
	E. J. Brunenkant.....	111.00
	C. Brunenkant	90.00
	Thomas Weedin	132.00
	Frederick E. White.....	288.00
215	Frederick E. White assignee of Ah Lee..	255.00
	Sam Y. Barkley.....	150.00
	M. D. Langley	660.00
	Mrs. J. N. Russell.....
	Cora E. Dunagan.....	450.00
	Helen Weber	236.00
	W. E. Young.....	252.00
	Mrs. M. L. Graves.....	282.00
	Mrs. W. S. Hurst.....	282.00
	Mrs. C. S. Brown.....	300.00
	Maria B. Stevens.....	264.00
	A. T. Kleinschmidt.....	216.00
	Rosario C. Brenna.....	114.00
	A. J. Durago.....	312.00
216	H. Capin	75.00
	L. C. Frederick.....	156.00
	Gallin	96.00
Total		\$5219.00

That each and all of your petitioners named in this petition both in Paragraph II and Paragraph III hereof desire to intervene in the above entitled cause in support of the allegations contained in the complainant's bill heretofore filed herein and in the first intervening petition filed herein on or

about July 15, 1912, to the end that the rights of 217
 your said petitioners and each of them in connection with each and all of the matters set forth in said complainant's bill and in said first intervening petition may be protected and may be submitted to the jurisdiction of this court, by it to be dealt with in accordance with law and equity and the rules and practice of this Honorable Court.

And in this connection, your said petitioners and each of them, in support of this their petition of intervention herein, beg leave to refer to and make a part thereof, as though set forth at length, each and every paragraph of complainant's bill of complaint herein, save and except so much of 218
 Paragraph Three thereof as relates exclusively to the complainant herein, and also, your said petitioners and each of them beg leave to adopt and make a part hereof, as though set forth at length herein each and every allegation and paragraph contained in the said first petition of intervention filed herein on or about July 15, 1912, except Paragraphs One, Two and Three of said first intervention petition, and each of your said petitioners hereby reaver and reallege, each for himself, as though set forth at length herein, each and every such allegation contained in said bill and in said first intervention petition, as though the same were set out at length herein; 219

WHEREFORE, your petitioners and each of them respectfully adopt and hereby pray in accordance with the form of complainant's bill herein, and further;

1. That they and each of them may be permitted to intervene in the above entitled cause and join in the prayer of the complainant therein.

2. Your petitioners and each of them, who are

220 stockholders in the defendant Arizona Trust Company, pray that the transaction whereby said petitioners assigned and transferred their stock in the defendant Arizona Mutual Savings and Loan Association for stock in the defendant Arizona Trust Company, may be rescinded and declared to be of no force and effect.

3. And that a restitution or reassignment to the said petitioners of the stock in the Arizona Mutual Savings and Loan Association so transferred by them, and each of them, to the defendant Trust Company be adjudged and decreed and that the cancellation of the certificates of stock
221 received by said petitioners from the said Trust Company as aforesaid may be ordered.

4. And that it be adjudged and determined that the transaction whereby your petitioners gave up their said stock in the defendant Loan Association for stock in the defendant Trust Company, is wholly void and of no effect.

5. And further that the defendant Trust Company be required to make complete restitution of all the properties heretofore received by it from the defendant Arizona Mutual Savings and Loan Association, together with the interest and income
222 thereon; and

6. That said restitution be made to the receiver which your petitioners pray this court to appoint for the purpose of preserving and taking into his possession all of the assets of both of said defendants.

And to the end that full and complete Justice and equity maybe done between all of the parties hereto and under the well-settled rule in equity in such cases provided, that where the court assumes jurisdiction of the matters in controversy for pur-

poses, and to the further end that by permitting your said petitioners to intervene herein and have their rights herein adjudged and determined by this Honorable Court, a multiplicity of suits against said defendant Trust Company may thereby be avoided, 223

7. That an accounting between both of said defendant companies be had, as well as an accounting between the said defendants and their respective stockholders. And that a master be appointed to take proofs of the facts herein alleged and to determine the rights and equities of all of the parties concerned therein, and that the affairs of both companies be wound up, the assets marshaled and distributed, and to whomsoever may be adjudged to be entitled thereto. 224

8. And that your petitioners have such other and further and different relief as to the court may seem meet and proper in the premises.

9. And together with the costs and disbursements in this action expended.

W. M. SEABURY,
Solicitor for Petitioners.
306 Fleming Building, Phoenix, Arizona.

UNITED STATES OF AMERICA,)
DISTRICT OF ARIZONA,) ss.
STATE OF ARIZONA,)
COUNTY OF MARICOPA.)

225

William M. Seabury, being duly sworn, says: That he is a solicitor of this court. That he is the solicitor for the petitioners above named. That he has read the foregoing petition and knows the contents thereof. That the allegations therein contained, as far as they relate to his own

223 acts, are true, and as far as they relate to the acts of others he believes them to be true. That in regard to all matters and things in the foregoing petition alleged which are not within the personal knowledge of this deponent, the deponent has been fully informed and he believes that the same are true. That the reason why this petition is not verified by the petitioners herein and is verified by the deponent, is that all of the said petitioners are absent from the county of Maricopa where deponent resides and are inaccessible to deponent, and by reason of the great number of petitioners interested herein it becomes and is impractical to have said petition verified by each of said petitioners in person. And that the facts in said petition alleged are peculiarly within the knowledge of deponent as obtained by him from examinations, personally conducted by him, of the records on file before the Arizona Corporation Commission in connection with the application of the Arizona Trust Company for a certificate authorizing it to transact business in the state of Arizona, and from all the testimony which deponent has heard relating to the subject matter herein involved, and from communications received by deponent from many other stockholders in the defendants above named and from other sources of information.

228

W. M. SEABURY.

Subscribed and sworn to before me this 29th day of January, A. D. 1913.

(Seal)

JOS. S. JENCKES,
Notary Public.

My commission expires Feb. 16, 1916.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK,	}	
Complainant,		
vs.		
ARIZONA MUTUAL SAVINGS		
AND LOAN ASSOCIATION,		
and the Arizona Trust Com-		
pany,		
Defendants.		

In Equity.

No.

230

ANSWER.

Come now the defendants, the Arizona Mutual Savings and Loan Association and the Arizona Trust Company, and for answer to the several petitions in intervention herein, jointly and severally say:

I.

That they each of them severally deny that they or either of them, or that the officers or directors of either of them conspired and covenanted together for the purpose of doing any act to defraud or injure the interveners or any of them, or of any of the shareholders or creditors of either of the defendant corporations; and deny that they, or either of them, did in fact do any act which resulted in fraud or injury to any of them.

231

They jointly and severally deny that the Arizona Trust Company ever transferred or delivered to the defendant, the Arizona Mutual Savings and Loan Association, thirteen hundred

232 (1300) shares of the preferred stock of the defendant, the Arizona Trust Company, or of any of the preferred shares of the stock of the said defendant, directly or indirectly, otherwise than as hereinafter in this answer set out.

II.

Further answering the said petitions in intervention, the defendants jointly and severally say that on or about theday of October, 1899, the defendant, the Arizona Mutual Savings and Loan Association, became and was incorporated under the provisions of Chapter Five, Title XII, 233 Corporations, of Revised Statutes of the Territory of Arizona, 1887, and of the Acts amendatory thereof; that thereafter the said Arizona Mutual Savings and Loan Association adopted by-laws for the conduct of its business; that almost immediately after the date of its incorporation as aforesaid, the said Arizona Mutual Savings and Loan Association began the transaction of its business for the purpose for which it was organized, except that it did not at any time engage in the banking business, and continued the transaction of its business until as hereinafter set out; that said corporation is still in existence and exercising its corporate franchises for the 234 purpose of winding up its business, as hereinafter more fully disclosed;

That in the due course of its business the said Arizona Mutual Savings and Loan Association issued to divers persons, among them the interveners herein, certificates of the ownership of the several classes of stock which by its said articles of incorporation, its by-laws, and by resolutions of its board of directors, duly adopted from time to time, it was authorized to do;

That on or about the 11th day of April, 1911,

there were outstanding of said stock, including 235
 the stock owned or claimed by the interveners
 herein, stock of the attained or book value aggregating approximately One Hundred Thirty Thousand Dollars (\$130,000); that on said date, the said Arizona Mutual Savings and Loan Association was otherwise indebted for moneys borrowed by it and used in the due course of its business in the further sum of Twelve Thousand Dollars (\$12,000).

That prior to the said 11th day of April, 1911, the said Arizona Mutual Savings and Loan Association, in the due and regular course of its business, had loaned out upon real estate security and 236
 upon the shares of its capital stock, as it had a right to do under its articles of incorporation, by-laws, and the resolutions of its board of directors, all of the available funds of the Association, amounting on said date, together with the interest accumulated thereon, in the aggregate to the sum of about One Hundred Fifteen Thousand Dollars (\$115,000); that the said Arizona Mutual Savings and Loan Association also upon said date owned various pieces of real estate in the State of Arizona, which had theretofore been pledged to it to secure loans and which, because of the insolvency of the borrowers, it was required to take and did take, aggregating in value 237
 not to exceed, and which was estimated to be Fifteen Thousand Dollars (\$15,000); and these were all of the assets of the said Arizona Mutual Savings and Loan Association upon said 11th day of April, 1911; that the loans aforesaid made by the Arizona Mutual Savings and Loan Association were made for terms then having to run varying from one to seven years;

That by reason of business depressions which then prevailed and had prevailed for some time

238 in various parts of the State of Arizona where such loans had been made and where the real estate pledged to secure said loans was situated, many of the shareholders of the said Association defaulted in the payment of their dues to said Association and many of those to whom the money of said Association had been loaned as aforesaid upon real estate security failed to pay the interest accrued thereon and much of the real estate pledged to secure said loans had become materially depreciated in value, so that it became apparent that said Association could not discharge its indebtedness as it matured and its obligation to redeem and pay off its stock theretofore
239 issued as such stock should mature; that because of such business depression prevailing as aforesaid and for other causes unknown to the defendants, the business of the defendant, the Arizona Mutual Savings and Loan Association, had greatly diminished in volume, notwithstanding the diligent efforts of the manager and agents of said Association to maintain it; that by reason of such diminution of the value of new business and a failure of the efforts of the managers and agents of said Association to maintain it, the theretofore and usual current income of said Association gradually diminished and became inadequate to meet and discharge the obligations of
240 said Association upon its indebtedness and maturing stock; that the income of said Association consisted of dues agreed to be paid upon subscriptions for stock by the subscribers therefor, premiums upon loans, interest upon loans, fines imposed for delinquents, forfeitures because of default in payment for stock, and withdrawal fees; that the aggregate income of the Association from all sources had so diminished for the causes above stated, that the Association could neither continue its business except at a loss, nor could it meet its obligations to pay its indebtedness and

those arising out of the maturing of stock there- 241
tofore issued;

That at that time a large amount of the stock of the said Arizona Mutual Savings and Loan Association theretofore issued was maturing and becoming subject to redemption and payment by the Association; that none of the stock of the interveners herein had then matured, nor has it since matured, under the terms under which it was issued; that the assets of the Association, consisting as aforesaid of loans upon real estate, some having long terms to run, and others in the payment of which default had been made of both premiums and interest, and the real estate pledged 242 therefor depreciated in value, were not available under the corporate powers of the defendant, the Arizona Mutual Savings and Loan Association for use to pay off the indebtedness of the Association and to redeem and pay off the shares of the stock so maturing; that any attempt to realize on said assets would have resulted in a great loss to the Association and to its shareholders; that a dissolution of said Savings and Loan Association and an effort to realize upon its assets would have likewise resulted not only in great expense, but in a substantial loss to the shareholders and members of said Arizona Mutual Savings and Loan Association; 243

That it was thereupon resolved by the Board of Directors of the said Arizona Mutual Savings and Loan Association to submit to its members and stockholders a proposition to organize another and different corporation with other and larger and more comprehensive corporate powers, which new corporation, when organized, should take over all of the assets of the said Arizona Mutual Savings and Loan Association and so handle and otherwise treat the assets thereof

244 that the largest amount might be realized there-
 from for the use and benefit of the shareholders
 and creditors of the said Arizona Mutual Sav-
 ings and Loan Association. It was believed that
 by such a plan an amount could be realized from
 said assets sufficient to pay to the stockholders of
 the said Association the then attained or book
 value of their stock in said Association; that for
 that purpose, it was contemplated that such of
 the stockholders of the said Arizona Mutual Sav-
 ings and Loan Association who shall elect to ex-
 change the attained or book value of their shares,
 whether matured or not, in the Association for
 an equivalent value at par of the preferred stock
 245 of the proposed new corporation might do so, and
 that those of the shareholders of the Arizona Mu-
 tual Savings and Loan Association who would
 not elect to exchange their shares as aforesaid
 in the said Arizona Mutual Savings and Loan
 Association for an equivalent amount at par of
 the stock of the proposed new corporation should
 be paid by the new corporation the attained or
 book value thereof;

That accordingly the Board of Directors of the
 said Arizona Mutual Savings and Loan Associa-
 tion caused to be organized and incorporated
 under the laws of the Territory of Arizona the
 246 Arizona Trust Company, one of the defendants
 herein; that said defendant, the Arizona Trust
 Company, is now doing business under the
 authority and license as provided by the laws of
 the State of Arizona;

That thereupon plans were attempted to be de-
 vised whereby preferred shares of the Arizona
 Trust Company might be exchanged at par for
 the stock of the Arizona Mutual Savings and
 Loan Association; that for that purpose thirteen
 hundred (1300) shares of the par value of One

Hundred Thirty Thousand Dollars (\$130,000) 247
of the preferred stock of the said Arizona Trust
Company were set aside and segregated and de-
signed to be used for the purpose of such ex-
change; that in fact, said thirteen hundred (1300)
shares of said preferred stock were never issued
or delivered to the said Arizona Mutual Savings
and Loan Association; that pending the efforts
to effect the exchange aforesaid the holders of
the stock of the Arizona Mutual Savings and
Loan Association, aggregating an attained or
book value thereof approximating Seventy thou-
sand Dollars (\$70,000), exchanged the same for
preferred stock of the said Arizona Trust Com-
pany and assigned and transferred their stock in 248
said Savings and Loan Association to the Ari-
zona Trust Company; that others of the stock-
holders of the said Arizona Mutual Savings and
Loan Association, for value paid to them by the
said Arizona Trust Company, assigned their
stock of the aggregate attained or book value of
approximately Thirty-two Thousand Dollars
(\$32,000) to the said Arizona Trust Company,
so that on the 28th day of May, 1912, there were
outstanding of the stock of the said Arizona Mu-
tual Savings and Loan Association in the hands
of the stockholders thereof, other than the said
Arizona Trust Company, stock of the attained or
book value of Twenty-seven Thousand, Nine 249
Hundred Seventy-three and 93-100 Dollars
(\$27,973.93), of which stock that of the inter-
veners alleging themselves yet to be stockhold-
ers of the said Savings and Loan Association, is
a part; that as and part of an agreement between
the Arizona Trust Company and the said Arizona
Mutual Savings and Loan Association, the Ari-
zona Trust Company assumed to pay the indebt-
edness of the said Arizona Mutual Savings and
Loan Association other than that due stockhold-
ers on account of their stock subscriptions,

250 amounting, as aforesaid, to about Twelve Thousand Dollars (\$12,000); that in consideration of the premises the Arizona Mutual Savings and Loan Association had assigned and transferred or caused to be assigned and transferred to the Arizona Trust Company all of its assets hereinbefore enumerated; that on the said 28th day of May, 1912, there being outstanding as aforesaid of the stock of the said Arizona Mutual Savings and Loan Association, other than stock theretofore assigned and transferred to the said Arizona Trust Company the sum of Twenty-seven Thousand, Nine Hundred Seventy-three and 93-100 Dollars (\$27,973.93), the said Arizona
251 Trust Company and the said Savings and Loan Association deposited with William McNeff, the then and still the President of the said Arizona Mutual Savings and Loan Association, Thirty Thousand Dollars (\$30,000) in value, secured by notes and mortgages on real estate theretofore as aforesaid assigned by the said Arizona Mutual Savings and Loan Association to the said Arizona Trust Company, to be held in trust by the said McNeff, President of the said Arizona Mutual Savings and Loan Association as aforesaid to secure to the holders thereof the payment of the attained or book value of the stock of the
252 said Arizona Mutual Savings and Loan Association held by others than the said Arizona Trust Company, among them as aforesaid, the stock of the interveners herein, who allege themselves still to be the owners thereof; that said notes and mortgages are of greater value than the attained or book value of said outstanding stock; that the said McNeff then took the exclusive control of the said notes and mortgages aforesaid for the purposes aforesaid, and has held the same ever since, except that the amount thereof has been reduced from time to time as the liabilities upon outstanding shares of the stock of the said Loan Associa-

tion have been paid and discharged or said stock 253
 has been assigned to the said Arizona Trust Com-
 pany, until the amount of said notes and mort-
 gages was reduced at the time the receiver here-
 tofore appointed herein took possession thereof,
 but that the amount and value thereof was never
 reduced below the attained or book value of the
 outstanding stock of the Arizona Mutual Sav-
 ings and Loan Association; that the defendant
 the Arizona Trust Company is now the owner of
 about ninety per cent (90%) of the entire out-
 standing stock of the said Savings and Loan
 Association, and as such owner of said stock is
 and has been the equitable owner of a like pro-
 portion of all of the assets of the said Arizona 254
 Mutual Savings and Loan Association;

And defendants deny that any of the interven-
 ers who exchanged their stock in the said Ari-
 zona Mutual Savings and Loan Association for
 stock in the Arizona Trust Company were in-
 duced to do so by any false or fraudulent misrep-
 resentations made to them by either of the de-
 fendants, either to the effect that in April, 1911,
 One Hundred Thirty Thousand Dollars (\$130,-
 000) worth of the assets of the Arizona Mutual
 Savings and Loan Association had been in fact
 lawfully transferred to and had become the prop-
 erty of the defendant Arizona Trust Company, 255
 or that if the said interveners would surrender
 their stock in the defendant Arizona Mutual Sav-
 ings and Loan Association in exchange for pre-
 ferred stock in the defendant Arizona Trust Com-
 pany that they would receive rights, privileges
 and benefits in the Arizona Trust Company which
 were the same as and identical with the rights,
 privileges and benefits which they had enjoyed
 as stockholders in the said Arizona Mutual Sav-
 ings and Loan Association, or that as and when
 the said defendant Trust Company acquired the

256 assets of the defendant Arizona Mutual Savings and Loan Association, the said defendant Trust Company would continue to care for the investment of the interveners who exchanged their stock in the Arizona Mutual Savings and Loan Association for the stock in the Arizona Trust Company without charge or expense against them, and they deny that they made any such representations or substantially any such representations; they deny that since April, 1911, the defendant Arizona Trust Company has charged the expense of operating and maintaining the said defendant Trust Company against the Arizona Mutual Savings and Loan Association and the
257 assets thereof.

And defendants further deny that since its organization, the management of the affairs of said Arizona Trust Company has been wasteful, extravagant, dishonest or incompetent.

KIBBEY, BENNETT & BENNETT,
Attorneys for Defendants.

STATE OF ARIZONA, }
COUNTY OF MARICOPA. } ss.

258 John T. Dunlap, being duly sworn, upon his oath, deposes and says: That he is Treasurer of the defendant corporation, the Arizona Trust Company; that he has read the foregoing answer and that the facts therein stated are true, as he verily believes.

JOHN T. DUNLAP.

Subscribed and sworn to before me this 23rd day of November, 1912.

B. L. RUDDEROW,
Notary Public.

(My commission expires Sept. 26, 1916.)

STATE OF ARIZONA, }
 COUNTY OF MARICOPA. } ss.

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J. C. Reid, being duly sworn, upon his oath, deposes and says: That he is Vice-President of the defendant corporation, Arizona Mutual Savings and Loan Association; that he has read the foregoing answer and that the facts therein stated are true, as he verily believes.

J. C. REID,

Subscribed and sworn to before me this 23rd day of November, 1912.

B. L. RUDDEROW,
 Notary Public.

260

(My commission expires Sept. 26, 1916.)

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EXHIBIT 7.

IN THE

District Court of the United States
 FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK,
 Complainant,
 vs.
 ARIZONA MUTUAL SAVINGS
 AND LOAN ASSOCIATION,
 and the Arizona Trust Com-
 263 pany,
 Defendants.

REPLICATION.

And now comes each and all of the interveners herein and replying to the answer filed herein, say:

That saving and reserving all manner of ex-
 ceptions to the insufficiency of the answer for
 replication thereto, doth say that the complain-
 ants' bill and the bill of each and all of the inter-
 264 veners herein is true and sufficient as averred and
 that each of said interveners is ready to prove it,
 and that the answer of the defendants is untrue
 and insufficient.

WHEREFORE, each of said interveners pray re-
 lief as set forth in the complainants' bill of com-
 plaint and in the respective bills in intervention
 herein.

W. M. SEABURY,
 Solicitor for Intervenors.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK,	}
Complainant,	
vs.	
ARIZONA MUTUAL SAVINGS	
AND LOAN ASSOCIATION,	
and the Arizona Trust Com-	}
pany,	
Defendants.	

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FINAL DECREE.

This cause came on to be heard at this term of the Court, and, after hearing the witnesses and receiving the evidence offered in support of the claims of the interveners herein and after hearing counsel for the interveners and counsel for the defendants as to the final decree to be entered herein, and upon a full consideration thereof, it was ordered, adjudged and decreed, as follows:

FIRST: That the persons hereinafter named in this paragraph are interveners in the above entitled cause who are still stockholders in the defendant Arizona Mutual Savings and Loan Association, and, as such, have paid in to said defendant Arizona Mutual Savings and Loan Association the following sums set opposite the names of each:

John Dennett, Jr.....	\$	352.00
J. G. Bogard.....		180.00
J. J. Keating.....		36.00

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268	Rose Boehmer	360.00
	Mary Bleak	72.00
	Harry E. Harter.....	168.00
	H. S. Gray.....	570.00
	Mary E. Ellsworth.....	891.78
	L. M. Gustafson.....	500.00
	A. H. Ferrin.....	288.00
	Lucy H. Purdum.....	144.00
	H. P. Wightman.....	450.00
	A. C. Lockwood.....	472.00
	Alex Anderson	675.00
	D. Bohn	600.00
	Erit Equist	450.00
	A. H. Oeltjen.....	252.00
269	George S. Hughes.....	288.00
	Mrs. W. J. Jackson.....	144.00
	Lysander Cassidy	307.00
	Ramon Brenna	180.00

SECOND: That the persons hereinafter named in this paragraph are interveners herein who were formerly stockholders in the defendant Arizona Mutual Savings and Loan Association, but who have exchanged their stock in the defendant Loan Association for stock in the defendant Arizona Trust Company, and that said persons are hereinafter referred to as "exchanging stockholders" in the defendant Loan Association, and that each of the persons named in this paragraph have heretofore paid in to the defendant Loan Association or to the defendant Trust Company the following sums set opposite the names of each:

Ross H. Blakely.....	\$ 72.00
John W. Harris, Jr.....	126.00
A. E. Morcom.....	450.00
Fred W. Albright.....	60.00
M. Kirshwing	474.00
Olaf Olsen	266.44

Theo. Holten and Ole Holten.....	256.43	271
Hugo Sandquist	1,049.33	
Eugene Seeley	558.21	
James H. East.....	351.21	
Fred Cadwell	352.67	
Margaret Cadwell	1,211.98	
E. B. Tinker.....	312.00	
E. L. Hosler.....	390.00	
S. L. Hosler.....	264.00	
Glenn W. Morse.....	324.00	
B. G. Tang Fong.....	192.00	
A. E. Gillard.....	504.00	
J. C. Wilhelm.....	210.00	
Frank A. Moss.....	252.00	
Geo. K. Anderson.....	504.00	272
L. D. LaChance.....	180.00	
Grace Langston	600.00	
Frank A. Flickinger.....	280.00	
Charles J. Patterson.....	270.00	
E. T. Staebler.....	458.00	
Nettie Sheldon	282.00	
Lloyd C. Henning.....	210.00	
Wilson Patterson	264.00	
E. W. Clayton.....	864.00	
William C. Faulkner.....	1,000.00	
Walter W. Williams.....	402.00	
J. N. Stratton.....	204.00	
W. E. Platt.....	204.00	
John F. Weber.....	192.00	273
S. G. Ijams.....	300.00	
Ida N. Frye.....	600.00	
William Sobey	318.00	
William Whalley	318.00	
O. W. Miller.....	354.00	
William H. Watts.....	1,680.00	
Globe Lumber Co.....	899.10	
Alfred Hansen	552.00	
Clara F. Bloom, nee Clara Ferrin.....	318.00	
Orville Young	204.00	
Fred W. Horn.....	285.00	

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274	J. C. Bradley.....	300.00
	Oliver Myers	180.00
	J. W. McLean.....	600.00
	Joseph Carpenter	216.00
	John Steigler	696.00
	C. R. Freeman.....	312.00
	M. A. Ramirez.....	216.00
	E. J. Brunenkant.....	111.00
	C. Brunenkant	90.00
	Thomas Weedon	132.00
	Frederick E. White.....	288.00
	Frederick E. White, Assignee of Ah Lee	225.00
	Sam Y. Barkley.....	150.00
	M. D. Langley.....	660.00
275	Mrs. J. N. Russell.....	374.38
	Cora E. Dunagan.....	450.00
	Helen Weber	236.00
	W. E. Young.....	252.00
	Mrs. M. L. Graves.....	297.36
	Mrs. W. S. Hurst.....	297.53
	Mrs. C. S. Brown.....	318.45
	Maria B. Stevens.....	290.04
	A. T. Kleinschmidt.....	233.40
	Rosaria C. Brena.....	114.00
	A. J. Durago.....	312.00
	H. Capin	75.00
	L. C. Frederico.....	156.00
276	E. T. Collins.....	96.00

THIRD: That heretofore and in or about the month of March, 1911, the defendant Arizona Trust Company was, by those in control of the defendant Arizona Mutual Savings and Loan Association cause to be organized; and that at or about said time the defendant Loan Association was insolvent and unable to meet its obligations to its stockholders as said obligations were accruing, and that the purpose of the organization of the defendant Trust Company was to take over the assets and properties of said defendant

Loan Association, and to engage in the business of conducting and maintaining the said defendant Trust Company. 277

FOURTH: That as to the interveners herein and other non-consenting stockholders in the defendant Loan Association, who had never transferred their stock therein for stock in the defendant Trust Company, the said proposed transfer of the assets and properties of the defendant Loan Association to the defendant Trust Company was unlawful and invalid and not binding upon the interveners herein or upon the other outstanding and non-exchanging stockholders in the defendant Loan Association. 278

FIFTH: That pursuant to such purpose, all of the assets and properties of the defendant Loan Association were subsequently transferred to the defendant Trust Company, since which time the defendant Trust Company and its officers have dealt with the said assets and properties as though owned by the defendant Trust Company and have confused and inseparably mingled the assets derived from the defendant Loan Association with the assets of the defendant Trust Company, and that at this time it is impracticable and impossible in justice to the parties hereto to direct and enforce a re-transfer of all of the original properties and assets so derived by the defendant Trust Company, and the profits thereon, from the defendant Loan Association to said last named Company or the receiver of said Company. 279

SIXTH: That all of the interveners above named, described herein as "exchanging stockholders" in the defendant Loan Association, were induced to exchange their stock in the defendant Loan Association for stock in the said defendant Trust Company in reliance upon representations

280 theretofore made to them in the printed literature of one or both defendants and by verbal statements made to them by the representative of the defendants, and that such representations were in fact false and were known by the defendants to be false when made, and induced the said interveners to make the exchange of their said stock as aforesaid; in consequence whereof, the Court decrees that the said interveners named herein as exchanging stockholders in the defendant Loan Association be, and each of them hereby is, allowed and permitted to rescind the said exchange of their stock; and it is hereby ordered and decreed that each of said "exchanging stockholders" be, and they hereby are, restored to their
 281 original position and status as stockholders of the defendant Loan Association, and each of said "exchanging stockholders" is hereby deprived of his status of a stockholder in the defendant Trust Company.

SEVENTH: And to the end that the rights of all of the interveners herein and of the outstanding stockholders in the defendant Loan Association who never exchanged their stock therein for stock in the defendant Trust Company may be adequately preserved and protected, the Court hereby confirms the sale and transfer of all of the
 282 assets of the defendant Loan Association to the defendant Trust Company, and adjudges that complete title is vested in the defendant Trust Company of, in and to all of the assets and properties of whatsoever kind or nature heretofore owned by the defendant Loan Association, subject only to the lien and charges hereinafter specified.

EIGHTH: And for the further protection of the rights of the said interveners and the said stockholders in the defendant Loan Association

who never exchanged their stock therein for stock in the defendant Trust Company, the Court adjudges and determines that all of the assets and properties now or hereafter owned or acquired by the defendant Trust Company be, and they hereby are, impressed with the trust and lien in favor of each of the said interveners named herein to the extent and amount set opposite the names of each, and in favor of the stockholders in the defendant Loan Association who never exchanged their stock therein for stock in the Trust Company for the amounts heretofore paid in by such last named persons in the following names and amounts:

		283
S. Arneson	\$3,349.10	
Mrs. H. C. Bagge.....	321.96	
A. M. Baker.....	238.00	
A. Barrasa	82.00	
Ed. Barry	140.00	
H. L. Bedford.....	185.00	
L. Bejarano	100.00	
A. C. Bittick.....	114.00	
R. R. Brenz.....	523.48	
D. A. Burke.....	360.00	
A. E. Carillo.....	314.86	
D. H. Butris.....	165.00	
W. H. Caruthers.....	300.00	
R. F. Chamberlain.....	78.00	285
D. P. Clanton.....	100.00	
T. N. Clanton.....	112.00	
J. S. Clark.....	174.00	
S. B. Lucas.....	902.00	
E. J. Doyle.....	96.00	
A. J. Durazo.....	242.00	
Mrs. L. C. Earle.....	84.00	
Miss V. Espionzo.....	168.00	
A. H. Ferrier.....	296.00	
C. Hagerland	911.65	
J. R. Hampton	77.00	

286	Wade Hampton	541.06
	C. F. Holdsworth.....	637.80
	D. P. Jones.....	98.00
	H. A. Kendall.....	71.00
	A. Maurino	950.00
	C. Monroe	112.00
	E. Morales	109.00
	Mrs. L. R. Morris.....	297.90
	F. E. Murphey.....	327.72
	Jennie McCarthy	570.00
	W. W. McNeff.....	130.00
	Ida Patterson	79.43
	J. S. Patten.....	956.70
	C. Purtyman	108.96
287	C. Purtyman	175.70
	G. R. Robinette.....	156.00
	A. D. Rosecrans.....	551.86
	T. A. Sanders.....	350.00
	A. D. Rosecrans.....	192.00
	Short and Ward.....	112.00
	Short and Ward.....	93.00
	J. C. Simmons.....	234.84
	A. K. Snider.....	114.00
	B. D. Snider.....	114.00
	M. M. Stacy.....	114.00
	R. W. Sturgis.....	516.64
	J. H. Thompson.....	1,019.43
	J. Barragan	101.00
288	J. Wagner	124.59
	Mrs. E. Widner.....	405.16
	A. Millett	989.00
	M. Potter	1,089.65
	A. H. Hammer.....	370.00
	Wade Hampton	406.73

NINTH: And to effectuate this decree and to enable it expeditiously and economically to be carried into full force and effect, the Court directs George D. Christy, Esq., as the temporary receiver of the defendant Loan Association, hereto-

fore duly appointed, to account to the Court and 289
to surrender and deliver to the permanent receiver of the defendant Trust Company, hereinafter named, all of the assets and property of whatsoever kind or nature which have heretofore come into his hands as such receiver; and it is adjudged and decreed that the accounts of said receiver presented simultaneously herewith are passed and adjudged to be in all things correct, and the bond of said receiver is hereby cancelled and the sureties thereon exonerated from further liability thereon; and the Court discharges the said George D. Christy, Esq., as receiver of the defendant Loan Association and from all further responsibility and liability arising out of said receivership; and it appearing to the Court's satisfaction that the said George D. Christy, Esq., as receiver, has fully and faithfully discharged the duties of his trust, and in connection therewith it has been necessary for the said receiver to retain counsel, and that, by reason of such necessity, said receiver has retained Messrs. Chalmers and Kent as his counsel, which counsel have rendered substantial and valuable services to the said receiver in the conservation and preservation of the estate of which the said George D. Christy, Esq., was receiver; and it appearing to the Court's satisfaction that counsel for the interveners herein has rendered substantial services of 290
value to all of the interveners and to all of the stockholders of the defendant Loan Association, named in the preceding paragraph, and that said services have resulted in the production of a fund in Court consisting of the assets of the said defendant Loan Association and of the assets of the said defendant Trust Company for the benefit of the said interveners named herein and for the benefit of the stockholders of the defendant Loan Association, named in the preceding paragraph, and the cause being one of extraordinary and 291

292 exceptional difficulty and the Court being fully advised by proof of the value of the services rendered; now, therefore, in accordance with the usual practice of the Court in such cases, the Court fixes the allowances of the said George D. Christy, Esq., as receiver, and of his counsel, and of the counsel for the interveners herein, as follows:

To George D. Christy, Esq., for services rendered as aforesaid, Twelve Hundred and Fifty Dollars (\$1,250.00);

293 To Messrs. Chamlers and Kent, for services rendered as counsel for said receiver, Twelve Hundred and Fifty Dollars (\$1,250.00);

To the interveners above named, upon account of the services rendered to them in this proceeding by their counsel, William M. Seabury, Three Thousand, Three Hundred and Seventy-six and 6-100 Dollars (\$3,376.06).

294 And the Court further directs the permanent receiver, hereinafter named, to pay the items appearing upon the account of George D. Christy, Esq., as receiver of the defendant Loan Association, which are unpaid and which are hereby allowed.

TENTH: And the Court hereby appoints Sims Ely, Esq., as permanent receiver of the defendant Arizona Mutual Savings and Loan Association and of the defendant Arizona Trust Company; and the said Sims Ely, Esq., having duly presented his accounts as temporary receiver of the defendant Trust Company, and the said accounts are hereby passed and allowed; and the fees of the said Sims Ely, Esq., as temporary receiver, are hereby fixed in the sum of Seven Hundred and

Fifty Dollars (\$750.00); and it appearing to the Court's satisfaction that the said receiver has necessarily employed Clyde M. Gandy, Esq., as counsel, and that he has rendered substantial services to the said temporary receiver in aid of said receiver, the compensation of the said Clyde M. Gandy, Esq., for services rendered to the said Sims Ely, Esq., as temporary receiver, is hereby fixed in the sum of Seven Hundred and Fifty Dollars (\$750.00); and full power and authority is hereby conferred upon the said Sims Ely, Esq., as permanent receiver, to do and perform all such acts as may be necessary and proper to be done by a permanent receiver, in accordance with the usual practice of this Court in such and similar cases; and the said receiver is hereby directed to sell at public or private sale and upon such terms as to the said receiver may seem proper, but subject to the future ratification and confirmation of the Court, so much or the whole of the assets and properties of the defendant Trust Company as may be necessary first to pay and discharge the allowances heretofore made as the costs of administration of the insolvent estate of the said defendant Loan Association, and thereafter to discharge and pay the costs and expenses incident to the administration of the estate of the said defendant Trust Company, including the allowance hereafter to be made to the said Sims Ely, Esq., as permanent receiver and to his counsel in the premises, and that thereafter he pay pro rata in equal shares to each and all of the interveners herein and to the stockholders of the defendant Loan Association, named in the preceding eighth paragraph, such sums of money as may be received by such permanent receiver until the said interveners and the said non-exchanging Loan Association stockholders, named in the preceding eighth paragraph, are paid in full the amounts set opposite their respective names herein; and

298 that the said receiver pay the balance remaining thereafter, if any, in his hands to the defendant Trust Company for the benefit of such persons as may be lawfully entitled thereto.

ELEVENTH: And the Court hereby vests the said Sims Ely, Esq., as permanent receiver, with all the rights, title, benefits and privileges heretofore existing in the defendant Arizona Mutual Savings and Loan Association and in the said George D. Christy, Esq., as temporary receiver thereof, with full power to said permanent receiver to be substituted in his capacity as permanent receiver of the defendant Arizona Mutual
 299 Savings and Loan Association or as permanent receiver of the defendant Arizona Trust Company, or both, in any and all litigation in which the defendant Loan Association, or the said George D. Christy, Esq., as temporary receiver thereof, or in which the defendant Trust Company, or the said Sims Ely, Esq., as temporary receiver thereof, may be a party, or in which the said defendant Loan Association, or said George D. Christy, Esq., as temporary receiver may have an interest; and full power and authority is hereby given to said Sims Ely, Esq., as permanent receiver, to employ and compensate, as in his judgment may seem proper, such counsel, or other
 300 assistants and employees as in the judgment of the said Sims Ely, Esq., as permanent receiver, may be for the benefit of the estate of which the said Sims Ely, Esq., is hereby appointed permanent receiver.

TWELFTH: And any and all persons having any property or assets of either defendant are hereby directed to deliver forthwith to the said Sims Ely, Esq., as permanent receiver of the defendants above named, all such property or assets in which either or both defendants have or claim

to have an interest; and the said defendants, and 301
 each of them, and all of the officers, directors,
 agents and representatives of the said defendants,
 and all persons claiming from, through or under
 them, or either of them, are hereby enjoined and
 restrained from in any way disposing of any of
 the properties of the defendants above named, or
 either of them, and from interfering or in any
 way embarrassing the said receiver in the per-
 formance of his said duties.

Done in open Court, this 27th day of Febru-
 ary, 1913.

RICHARD E. SLOAN, 302
 United States District Judge.

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EXHIBIT 9.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK, Complainant, vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION, and the Arizona Trust Com- 305 pany, Defendants.	}	In Equity. No.
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The petition of J. L. Waring, C. T. Wise,
 Frank Pister, Mrs. C. F. Richardson, Mrs. Lulu
 Y. Carruthers, Daniel Hibbard, G. E. Phelps,
 Lesuer & Co., J. H. Barnett, R. N. Stapley, C. H.
 Schulz, R. W. Wagoner, Frank W. Smake,
 ? Thomas A. Rickel, Fred Hensing, Mrs. Mar-
 ? garet Babbott, David B. Lovell, J. W. Francis,
 ? C. I. Smith, August P. New, Edgar A. Brown,
 ? Martin F. Taylor, August Johnson, John T. Stein-
 metz, August Schwalbe, Irving Devry, Inocente
 Morales, Oscar Emerson, Mrs. Stella Wade, John
 306 F. Klock, F. W. Smith, Chas. Kohn, N. G. Fang
 Fong, A. E. Gillord, Mrs. Maude Webster, inter-
 vening petitioners herein, through their attorney
 and solicitor Benton Dick, respectfully allege and
 show to this Honorable Court:

I.

That heretofore, and on July 15th, 1912, there
 was filed in this Honorable Court a bill of com-
 plaint in equity wherein one Charles W. Clark
 was complainant and the Arizona Mutual Sav-

ings & Loan Association and the Arizona Trust Company were defendants; that said suit was brought by the complainant above named, on behalf of himself and all others similarly situated as stockholders in the defendant, the Arizona Mutual Savings & Loan Association for the relief prayed for in said bill of complaint and that the final decree in said cause was entered on the 27th day of February, 1913, as hereinafter set forth. 307

II.

That all of your petitioners, except John Wagner, have been stockholders in the Arizona Trust Company since about the 1st day of May, 1912, and that your petitioner, John Wagner, has been a stockholder in the Arizona Mutual Savings and Loan Association since about the 1st day of April, 1911. 308

III.

That your petitioners desire to intervene in the above entitled cause in support of the allegations contained in complainant's bill heretofore filed herein and in support of the allegations in this petition to the end that the rights of your petitioners and each of them, in connection with each and all of the matters set forth in said complainant's bill and said petition, may be submitted to the jurisdiction of this Court, by it to be dealt with in accordance with law and equity and the rules and practice of this Honorable Court and in this connection your petitioners in support of this, their petition for leave to intervene herein, refer to and beg leave to make a part hereof, each and every paragraph of complainant's bill of complaint herein, insofar as the same may be applicable to the case of your petitioners. 309

That in addition to the matters set forth by reference to complainant's bill as aforesaid, your petitioners herein, who are stockholders in the defendant Arizona Trust Company as aforesaid, allege that heretofore each of said stockholders was a stockholder in the defendant Arizona Mutual Savings and Loan Association and as such entitled to all the rights and privileges of such stockholder in and to their proportionate shares of the assets and properties of the said Arizona Mutual Savings & Loan Association. That at various times subsequent to April, 1911, your pe-
311 tioners were induced to surrender their stock in the Arizona Mutual Savings and Loan Association, by the false and fraudulent representations made to them by the Arizona Trust Company and the Arizona Mutual Savings and Loan Association.

V.

That on the 27th day of February, 1913, a final decree was entered in the above entitled cause in which it was adjudged that certain intervening stockholders in the Arizona Mutual Savings and Loan Association, and the Arizona Trust Company should receive the sums opposite their re-
312 spective names in said decree, which said decree is by reference made a part thereof, that none of your petitioners were mentioned in said decree, that no notice was given petitioners of any pending suit, that petitioners, until the present time, were unaware that said companies were insolvent or that any suit was pending and that their rights were not protected; that the rights of petitioners have not been determined, and that unless said decree is set aside the rights of petitioners will not be protected for the reasons hereinafter set forth.

That under and by virtue of the decree hereinbefore mentioned, Mr. Sims Ely is named as permanent receiver and was ordered that all assets of the Arizona Mutual Savings & Loan Association and the Arizona Trust Company be turned over to him, but said decree and order so made as aforesaid did not require said receiver to give bond in any sum whatever and that the said receiver was not nor is under bond.

VII.

That said decree is so broad in its scope that almost unlimited powers are conferred upon said receiver and no restrictions except such as are ordinarily inferred or implied from the nature of the trust, are placed upon him in the matter of disposing of the assets and creating debts in the way of expenses and that unless said decree is set aside or modified and said petitioners are allowed to intervene and said receiver restrained, the assets of said defendant Companies will be dissipated and your petitioners will sustain irreparable losses. 314

VIII.

That since the appointment of Sims Ely, so appointed permanent receiver as aforesaid, said receiver has been and is wholly impotent so far as protecting and safe-guarding the interests of your petitioners is concerned; that said receiver has not devoted his personal time to the business of the defendant Companies, that he has not personally inspected the property or assets of said Companies nor caused an accounting to be made of the same, that said receiver has not only paid large fees as allowed by the Court in said decree,

316 but since said decree was entered he has expended large sums of money and is continuing to expend large sums of money and to make disbursements without any order or authority of this Court, that your petitioners are informed and believe and therefore state the fact to be that said receiver is about to dispose of large parcels of the real estate of the defendant Companies at a price wholly inadequate, that said receiver is not familiar with the line of business in which his duties require him to engage, that he is grossly unfit and incompetent to act as receiver of the said defendant Companies.

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IX.

Your petitioners further aver that on the 19th day of March, 1913, said Sims Ely, receiver as aforesaid, entered into an agreement of sale with one J. W. Walker, whereby said receiver agreed to dispose of certain real estate to the said J. W. Walker, and that one W. T. Smith, guaranteed or attempted to guarantee the performance by the said Walker, as aforesaid, is the identical W. T. Smith who was president of the
 for some months prior to the time that receivership proceedings were instituted, and who was largely responsible for the failure and
 318 insolvency of the said Company and that the said J. W. Walker has been for a number of years, and still is closely associated with the said Smith in different business transactions, and that your petitioners verily believe that the object of making said agreement for the sale of said property was to enable the said Smith to cover up former transactions which were detrimental to the best interests of the stockholders; that since the said Smith has ceased to be an officer of the said Company, and during the different stages of receivership of the said Arizona Mutual Savings and

Loan Association and the Arizona Trust Com- 319
 pany, the said Smith, and the said Walker have
 dominated and controlled the affairs of said Com-
 panies and that they do now dominate and control
 the affairs of said Companies and to dictate the
 policy of the receiver, that the receiver well
 knows, or should know, that the price agreed to
 be paid by the said Walker, for the said property
 is less than one-half of its actual value and that
 your petitioners verily believe, and therefore state
 the fact to be, that there is collusion between the
 said Smith and the said Walker, whereby Walker
 is to purchase the said property for a sum much
 less than its actual value.

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X.

That the sums which the receiver is authorized
 to pay to the various intervening stockholders in
 the Arizona Mutual Savings & Loan Association
 and the Arizona Trust Company, under and by
 virtue of the decree as aforesaid, nearly equal the
 present available assets of the said Companies
 and if the sale from the said receiver to the said
 Walker is consummated all of the available
 assets will have been consumed; that your peti-
 tioners have received nothing under and by virtue
 of the aforesaid decree, notwithstanding the
 money invested by them in said Companies has 321
 been used and is still being used to pay the fees
 and expenses of the receiver and the proceedings
 incident to the receivership proceedings.

Your petitioners further aver that unless the
 contract between the said receiver and the said
 Walker is rescinded and unless the aforesaid de-
 cree is set aside, they will sustain a total loss of
 all the money invested in said Companies and
 that they will not receive their proportionate share
 of the assets of said Companies nor any thereof.

That the said Arizona Mutual Savings and Loan Association and the said Arizona Trust Company are wholly insolvent and unable to meet and discharge the various obligations assumed by said Companies and that your petitioners have no other adequate remedy at law to redress the wrongs and grievances herein set forth, except in a court of equity, and in the above entitled cause.

WHEREFORE, your petitioners, and each of them, respectfully pray this Honorable Court:

323 FIRST. That they and each of them may be permitted to intervene in the above entitled cause and join in the prayer of the complaint therein.

SECOND. That the final decree entered in the above entitled action on the 27th day of February, 1913, be set aside and held for naught and that the said case be re-opened and that petitioners be allowed to intervene to the end that their rights may be protected.

324 THIRD. That the order of Court, if any there was, granted confirming the agreement of sale between the receiver and J. W. Walker, be vacated and that the receiver be ordered to rescind said agreement.

FOURTH. Your petitioners, who are stockholders in the defendant Arizona Trust Company, pray that the transaction whereby said petitioners assigned and transferred their stock in the defendant Arizona Mutual Savings and Loan Association for stock in the defendant Arizona Trust Company, may be rescinded and declared to be of no force and effect.

FIFTH. And that a restitution or re-assign-

ment to the said petitioners of the stock in the 325
 Arizona Mutual Savings and Loan Association
 so transferred by them, and each of them, to the
 defendant Trust Company be adjudged and de-
 creed and that the cancellation of the certificates
 of stock received by said petitioners from the said
 Trust Company as aforesaid may be ordered.

SIXTH. And that it be adjudged and deter-
 mined that the transaction whereby your peti-
 tioners gave up their said stock in the defendant
 Loan Association for stock in the defendant Trust
 Company, is wholly void and of no effect.

SEVENTH. And further that the defendant 326
 Trust Company be required to make complete res-
 titution of all of the properties heretofore received
 by it from the defendant Arizona Mutual Sav-
 ings and Loan Association, together with the in-
 terest and income thereon; and

EIGHT. That said restitution be made to the
 receiver and which your petitioners pray this
 Court be appointed for the purpose of preserving
 and taking into his possession all of the assets of
 both of said defendants.

And to the end that full and complete justice
 and equity may be done between all of the parties
 hereto and under the well settled rule in equity 327
 in such cases provided, that where the Court as-
 sumes jurisdiction of the matters in controversy
 for one purpose, such jurisdiction will be exer-
 cised for all purposes, and to the further end that
 by permitting your said petitioners to intervene
 herein and have their rights herein adjudged and
 determined by this Honorable Court, a multiplic-
 ity of suits against said defendant Trust Company
 may thereby be avoided.

NINTH. That an accounting between both of

328 the said defendant Companies be had, as well as an accounting between the said defendants and their respective stockholders. And that a master be appointed to take proofs of the facts herein alleged and to determine the rights and equities of all of the parties concerned therein, and that the affairs of both companies be wound up, their assets marshaled and distributed, and to whomsoever may be adjudged to be entitled thereto.

TENTH. That said receiver be restrained from paying any fees or other expenses except upon an order of this Honorable Court until an accounting is had and a hearing touching your petition-
329 ers' rights to the premises.

ELEVENTH. That this Honorable Court order the receiver of said defendant Companies to furnish a good and sufficient bond to insure the faithful performance.

TWELFTH. And that your petitioners have such other and further and different relief as to the court may seem meet and proper in the premises.

THIRTEENTH. And together with the costs and disbursements in this action expended.

330

BENTON DICK,
Solicitor and Attorney for Petitioners.

STATE OF ARIZONA, } ss.
COUNTY OF MARICOPA.

Inocente Morales, being first duly sworn, deposes and says: That he is one of the petitioners above named, that he has read the foregoing peti-

tion and knows the contents thereof and that the 331
 same is true of his own knowledge, except as to
 matters therein stated on information and belief,
 and as to those matters he believes it to be true.

That this verification is made by petitioner in
 his own behalf and on behalf of his co-petitioners.

INOCENTE MORALES.

Subscribed and sworn to before me this.....
 day of April, 1913.

 Notary Public.

My commission expires..... 332

334

EXHIBIT 10.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

335	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>CHARLES W. CLARK, Complainant, vs. ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION, and the Arizona Trust Com- pany, Defendants.</p> </div> <div style="width: 5%; text-align: center;">}</div> <div style="width: 35%; vertical-align: middle;">Motion.</div> </div>
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Come now the petitioners in intervention and move this Honorable Court that the decree heretofore, and on the 27th day of February, 1913, entered in the above-entitled cause, be set aside and held for naught and that petitioners be allowed to intervene and for such other and further relief as the Court may deem equitable.

That this motion is based upon the verified petition of petitioners hereto attached.

336

ROBERT E. MORRISON,
JOSEPH E. MORRISON, and ..
BENTON DICK,
Solicitors and Attorneys for Petitioners.

To the Defendants, Arizona Mutual Savings and Loan Association and Arizona Trust Company, and Sims Ely, Receiver:

You will please take notice that the foregoing

motion will be presented to this Honorable Court 337
as soon as counsel can be heard.

ROBERT E. MORRISON,
JOSEPH E. MORRISON, and
BENTON DICK,
Solicitors and Attorneys for Petitioners.

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

338

CHARLES W. CLARK,	}	
Complainant,		
vs.		
ARIZONA MUTUAL SAVINGS		
AND LOAN ASSOCIATION,		
and the Arizona Trust Com-		
pany,		
Defendants.		

In Equity.

No.

The petition of J. L. Waring, C. T. Wise,
Frank Pister, Mrs. C. F. Richardson, Lulu Y.
Carruthers, Daniel Hibbard, G. E. Phelps, Le-
suer & Co., J. H. Barnett, R. N. Stapley, C. H.
Schulz, R. W. Wagoner, Frank W. Smakel, 339
Thomas A. RiCel, Fred Hensing, Margaret Bab-
bett, David B. Lovell, J. W. Francis, G. I. Smith,
August P. New, Edgar A. Brown, Martin F.
Taylor, August Johnson, John P. Steinmetz, Aug-
ust Schwalbe, Irving De Vry, Inocente Morales,
Oscar Emerson, Stella Wade, John F. Klock, F.
W. Smith, Chas. Cahn, Maude Webster, Elmer
G. Carroll, Francis N. Courard, B. Hock, John
Wagner, Mariana Pascale, J. Knox Corbett,
Sarah Oliver, Y. N. Gallegos, D. W. Ellsworth,
Ernestine B. Robles, Rena Ridley, J. T. Griffiths,

- 340 Joshua Willis, Verba Willias, Pearl Bailey, Emma B. Jennings, D. Keith, J. S. Merrett, W. H. Merritt, Frank L. Hurgett, M. A. Roberts, Choorra Folk, Nellie I. Roberts, Lizzie Polk, Charlotte Monroe, P. W. Black, Mrs. L. B. Allison, Henry O. Jaasted, Mrs. I. Bartholomew, Martha A. Kreiling, Thomas W. Massie, Hiram Bhink-erhoff, F. T. Willis, D. C. Palmer, T. R. Blom-berg, D. F. Coggans, Franklin E. Potts, Demetrio Romero, Andrew P. Martin, J. G. Sturgeon, Le-onor Frederico, J. M. Gibbs, B. Caretto, James J. Devine, Roger W. Bishoff, Albert Sandoval, Nelson Gorman, Minnie C. Blesi, Elene V. Lin-coln, Amalia Scheurle, Sarah E. Marsh, Elizabeth
- 341 C. Devine, Annie H. Curley, Charles L. Day, R. C. Smith, E. A. Jacobs, Virginia A. Rosenfeld, Harry B. Wilcox, C. N. Cotton, Joseph Morello, L. F. Kuhn, William Harn, Archie Chisholm, J. W. McLaughlin, intervening petitioners herein, through their attorney and solicitors, Joseph E. Morrison and Benton Dick, and respectfully al-lege and show to this Honorable Court:

I.

- That heretofore, and on the 15th day of July, 1912, there was filed in this Honorable Court a bill of complaint in equity, wherein one Charles
- 342 W. Clark was complainant and the Arizona Mutual Savings and Loan Association and the Arizona Trust Company were defendants; that said suit was brought by the complainant above named, on behalf of himself and all others sim-ilarly situated as stockholders in the defendant, the Arizona Mutual Savings and Loan Associa-tion, for the relief prayed for in said bill of com-plaint and that the final decree in said cause was entered on the 27th day of February, 1913, as hereinafter set forth.

That all of your petitioners, except John Wagner, have been stockholders in the Arizona Trust Company since about the 1st day of May, 1912, and that your petitioner, John Wagner, has been a stockholder in the Arizona Mutual Savings and Loan Association since about the 1st day of April, 1911.

III.

That your petitioners desire to intervene in the above-entitled cause in support of the allegations contained in complainant's bill heretofore filed 344 herein and in support of the allegations in this petition to the end that the rights of your petitioners, and each of them, as well as those who have not joined in this petition, in connection with all of the matters set forth in said complainant's bill and said petition may be submitted to the jurisdiction of this Court, by it to be dealt with in accordance with law and equity and the rules and practice of this Honorable Court. And in this connection your petitioners in support of this, their petition for leave to intervene herein, refer to and beg leave to make a part hereof, each and every paragraph of complainant's bill of complaint herein, insofar as the same may be applicable to the case of your petitioners. 345

IV.

That in addition to the matters set forth by reference to complainant's bill as aforesaid, *your petitioners herein, who are stockholders in the defendant Arizona Trust Company, as aforesaid, allege that heretofore each of said stockholders was a stockholder in the defendant Arizona Mutual Savings and Loan Association and as such*

346 entitled to all the rights and privileges of such stockholder in and to their proportionate shares of the assets and properties of said Arizona Mutual Savings and Loan Association. That at various times subsequent to April, 1911, your petitioners were induced to surrender their stock in the Arizona Mutual Savings and Loan Association, by the false and fraudulent representations made to them by the Arizona Trust Company and the Arizona Mutual Savings and Loan Association.

V.

That on or about the 11th day of September, 347 1912, a receiver was appointed for the Mutual Savings and Loan Association, and on or about the 9th day of November, 1912, a receiver was appointed for the Arizona Trust Company; *that your petitioners had no notice of the appointment of said receivers nor any knowledge whatsoever of said appointments; that your petitioners were unaware that said companies were in the hands of a receiver and insolvent until some time in the month of February, 1913; that after the appointment of a receiver for the Arizona Trust Company, as aforesaid, the affairs of said company were so conducted that your petitioners were kept in ignorance of the true conditions with the re-*
 348 *sult that several of your petitioners made payments on their stock to the Arizona Trust Company at the office of said company in the city of Phoenix, which said payments were accepted by persons in charge of the office of said company and who represented and pretended to represent said company, when in truth and in fact said persons represented the receiver thereof and that said payments, so made as aforesaid, were accepted by said persons without notice to your petitioners that said concern was in the hands of a receiver.*

That on the 27th day of February, 1913, a final decree was entered in the above entitled cause in which it was adjudged that certain intervening stockholders in the Arizona Mutual Savings and Loan Association and the Arizona Trust Company should receive the sums set opposite their respective names in said decree, which said decree is by reference made a part hereof; that none of your petitioners were mentioned in said decree; *that no notice was given petitioners of any pending suit; that petitioners were unaware that said companies were insolvent or that any suit was pending or that their rights were not protected* 350 *until after the 27th day of February, 1913, that the rights of petitioners* have not been determined and unless said decree is set aside the rights of your petitioners will not be protected for the reasons hereinafter set forth.

VII.

That said decree, so entered on the 27th day of February, 1913, as aforesaid, is inaccurate and does not conform to the facts and the records of said companies in that the names of several stockholders are duplicated therein and that in some instances larger amounts are decreed and 351 ordered paid than the amounts paid in by said stockholders.

VIII.

Petitioners further aver that on the 19th day of March, 1913, Sims Ely, receiver of the Arizona Mutual and Arizona Trust Companies, entered into an agreement with one J. W. Walker, whereby said receiver agreed to dispose of certain real estate to the said J. W. Walker and that one W.

352 T. Smith guaranteed, or attempted to guarantee, the performance by said J. W. Walker of all his undertakings in that behalf; that petitioners are informed and believe, and therefore state the fact to be, that the price agreed upon between said receiver and said Walker, for said property, is wholly inadequate; that said W. T. Smith, who guaranteed, or attempted to guarantee, the performance of said contract by said Walker, as aforesaid, is the identical W. T. Smith who was president of said Arizona Trust Company for some months prior to the time the receivership proceedings were instituted and who was largely responsible for the failure and insolvency of said
 353 company; and that the said Walker and the said Smith have for a number of years been closely associated in different business transactions and that your petitioners verily believe that the object of making said agreement for the sale of said property was to enable said Smith to cover up former transactions which were detrimental to the best interests of the stockholders; that since said Smith has ceased to be an officer of the said company, and during different stages of the receivership of the Arizona Mutual and Arizona Trust Companies, said Smith and said Walker have dominated and controlled the affairs of said companies and that they are now attempting to
 354 dominate and control the affairs of said companies and to dictate the policy of the receiver; that the price agreed by said Walker to be paid for said land is, as petitioners are informed and believe and therefore state the fact to be, less than one-half of its actual cash value and that your petitioners verily believe that there is collusion between said Smith and said Walker to purchase said property for much less than its actual value.

IX.

That the sums which the receiver is authorized

to pay to the various intervening stockholders in the Arizona Mutual and Arizona Trust Companies, under and by virtue of the decree, as aforesaid, nearly equal the present available assets of said companies and if the sale by said receiver to said Walker is consummated, all of the available assets will have been consumed and nothing will be left for petitioners unless the contract between said receiver and said Walker is rescinded and said decree set aside; that if said decree is not set aside your petitioners will sustain a total loss of all money invested in said companies and will not receive their proportionate share of the assets of said companies, nor any thereof.

356

X.

That the said Arizona Mutual Savings and Loan Association and the Arizona Trust Company are wholly insolvent and unable to meet and discharge the various obligations assumed by said companies and that your petitioners have no adequate remedy at law to redress the wrongs and grievances herein set forth, except in a court of equity, and in the above-entitled cause.

WHEREFORE, your petitioners, and each of them, respectfully pray this Honorable Court:

FIRST. That they and each of them may be permitted to intervene in the above-entitled cause and join in the prayer of the complaint therein.

SECOND. That the final decree entered in the above-entitled action on the 27th day of February, 1913, be set aside and held for naught, and that said case be re-opened and that your petitioners be allowed to intervene to the end that their rights may be protected.

THIRD. That the order of Court, if any there

358 was, confirming the agreement of sale between the receiver and J. W. Walker be vacated and that the receiver be ordered to rescind said agreement.

FOURTH. Your petitioners, who are stockholders in the defendant Arizona Trust Compnay, pray that the transaction whereby said petitioners assigned and transferred their stock in the defendant Arizona Mutual Savings and Loan Association for stock in the defendant Arizona Trust Compnay may be rescinded and declared to be of no force and effect.

359 FIFTH. That a restitution or re-assignment to the said petitioners of the stock in the Arizona Mutual Savings and Loan Association so transferred by them to the defendant Trust Compnay, be adjudged and decreed and that the cancellation of the certificates of stock received by said petitioners from said Trust Company, as aforesaid, may be ordered.

SIXTH. That it be adjudged and determined that the transaction whereby your petitioners gave up their stock in the defendant Loan Association for stock in the defendant Trust Company, is wholly void and of no effect.

360

SEVENTH. That the defendant Trust Company be required to make complete restitution of all of the properties heretofore received by it from the defendant Arizona Mutual Savings and Loan Association, together with the interest and income thereon.

EIGHTH. That said restitution be made to the receiver for the purpose of preserving and taking into his possession all of the assets of both of said defendants and to the end that full and complete

justice and equity may be done between all of the parties hereto. 361

NINTH. That an accounting between both of said defendant companies be had, as well as an accounting between the said defendants and their respective stockholders, and that a master be appointed to take proofs of the facts herein alleged and to determine the rights and equities of all the parties concerned therein and that the affairs of both companies be wound up, their assets marshaled and distributed to whomsoever may be adjudged to be entitled thereto.

TENTH. That said receiver be restrained from paying any fees or other expenses except upon an order of this Honorable Court until an accounting is had and a hearing touching your petitioners' rights in the premises. 362

ELEVENTH. That your petitioners have such other and further relief as to the Court may seem meet and proper, together with the costs and disbursements in this action expended.

ROBERT E. MORRISON,
JOSEPH E. MORRISON,
BENTON DICK,

Solicitors and Attorneys for Petitioners.

363

UNITED STATES OF AMERICA, } ss.
STATE OF ARIZONA.

Benton Dick, being first duly sworn, deposes and says: That he is one of the solicitors and attorneys for the petitioners above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein

364 stated on information and belief and as to those matters he believes it to be true; that this verification is made for and on behalf of said petitioners.

BENTON DICK.

Subscribed and sworn to before me this 15th day of July, 1913.

ALLAN B. JAYNES,
(Seal) Clerk United States District Court.

By.....Deputy.

365

366

IN THE

District Court of the United States

FOR THE DISTRICT OF ARIZONA.

CHARLES W. CLARK,	}
Complainant,	
vs.	
ARIZONA MUTUAL SAVINGS	
AND LOAN ASSOCIATION,	
and the Arizona Trust Com-	}
pany,	
Defendants.	

In Equity.

No. 53.

368

DECREE.

The bill in this cause was filed by a stockholder of the Arizona Mutual Savings and Loan Association on behalf of himself and all other stockholders who might desire to come in and join in the suit. Its fundamental equity is the wrongful transfer of assets of the Loan Association to the Trust Company and the fundamental relief prayed for is the restitution of the assets of the Loan Association to the corporation, or to the receiver of that corporation, to be distributed to its stockholders on its dissolution by order of the Court.

369

The answers of both the Loan Association and Trust Company show the circumstances of the transfer of the assets of the Loan Association were clearly and plainly illegal and fraudulent and without effect to legally transfer these assets and clearly establish the right of the Loan Association to a full restitution.

The various intervening petitions filed prior to the decree in this cause contain in each a prayer

370 "that the transactions therein set forth as made between the said Loan Association and the said Trust Company may be declared to be annulled and of no force and effect, and that a restitution of all the assets of the defendant Loan Association from the defendant Trust Company be adjudged and decreed; that an accounting between both of the defendants above named be had and taken; that the Court appoint a master to take proof of the facts alleged in the bill and to determine the rights and equities of all the parties concerned herein, and that the effects of the Loan Association be wound up, its assets marshaled as aforesaid and distributed to those found to be entitled thereto." In neither the original bill nor

371 in any intervening petition is there any prayer for a confirmation of the title of the Trust Company or that the Court should vest the title of the property in that Company.

In all the pleadings the relief sought is based on the legal and equitable rights of the Loan Association to have a complete restitution of its assets and to have its assets marshaled and distributed to those found to be entitled thereto.

It is too clear to admit of argument that the assets of the insolvent corporation, after the payment of its just debts, are to be distributed equally amongst its stockholders and that the Court has

372 no warrant of law to make any other disposition of them as between the stockholders. There is no order in this case giving notice to the stockholders to present their claims to the assets of the company or to show their interest in its property.

The decree entered herein on the 27th day of February, A. D. 1913, without such notice and opportunity being afforded and without referring the case to a master, as prayed in the bill, to determine the rights and equities of all parties concerned, is that said stockholders mentioned in the

decree shall receive all they have paid in, not their proportionate share of the assets of the Loan Association, and by this means these particular stockholders are relieved of all participation in any losses of the Loan Association and are given a lien upon said assets to the exclusion of other stockholders. 373

It is fundamental that where a judgment or decree has been made which is responsive to the pleadings and in the due course of the lawful jurisdiction of the Court, such decree is beyond the power of the Court to modify or change after the adjournment of the term at which it is rendered, but it does not follow that because this is so that the Court may not set aside or modify a judgment which is not of such a character. In order to render the judgment or decree a finality, the emphatic requirement is that it must be responsive to the matters litigated, and in consonance with the legal relief to which the facts averred show the parties to be entitled. 374

The question is, has the Court jurisdiction to the extent claimed, and to constitute this there are four essentials:

FIRST: The Court must have cognizance of the class of cases to which the one adjudged belongs.

SECOND: The proper parties must be present. 375

THIRD: The point decided must be in *substance and effect* within the issues.

FOURTH: The Court must have proceeded after having acquired jurisdiction of the case, "according to established modes governing the class to which the case belongs."

A court must not go outside of its appointed sphere and it is impossible to concede that because

376 A. and B. are parties to a suit that the Court has the right or power to decide or determine any matter in which they are interested, whether the matter is involved in the pending litigation or not. A judgment on the matter outside the issues is of necessity altogether unjust because it concludes a point upon which the parties have not been heard. In order to make a judgment conclusive not only the proper parties must be present, but the Court must act on the property according to the rights which appear on the record.

It is the opinion of the Court that the decree of February 27th, 1913, which attempts to vest the title of the assets of the Loan Association in
377 the Trust Company is beyond the issues of the case made by the bill and answers and intervening petitions, it being shown by the pleadings that the Loan Association was insolvent when it did so and that it received no legal consideration for such transfer.

I am likewise of the opinion that the Court exceeded its powers on the pleadings and proof before it when it gave a lien to the intervening creditors on the assets of the Loan Association in the hands of the Trust Company for the amount they had paid in and compelled the parties who were interested in the assets of the Loan Association to bear all the losses incurred by the Loan Association in the conduct of its business.
378

IT IS THEREFORE ORDERED that the decree of the 27th day of February, A. D. 1913, be and the same is hereby modified as follows:

IT IS ORDERED that all the properties and assets of every kind and description which were transferred to the Trust Company by the Loan Association, be restored to the said Loan Association, or the receiver for said Loan Association, and that all contracts, conveyances or agreements

which were entered into by the said Loan Association or its agents or officers, be and the same are hereby set aside, vacated and annulled. 379

IT IS FURTHER ORDERED that the Trust Company transfer and deliver to the receiver in this cause, all property of every kind received by it, its officers or agents, from or on account of the transfer of the said assets of the said Loan Association or received by it from the use and investment or other disposition of any moneys or other property of the said Loan Association.

IT IS FURTHER ORDERED that this cause be referred to Edwin F. Jones, Standing Master of this Court, to state the account between the Loan Association and the Trust Company and to that end he shall hear testimony and may examine and inspect all papers on file in this Court or in the hands or possession of the receiver in this cause. 380

IT IS FURTHER ORDERED that the said Standing Master ascertain and report the exact amount due by said Loan Association to each of its stockholders, and in order to do so he is directed to publish a notice in some newspaper in the City of Phoenix, for at least five times, requiring all persons claiming to be stockholders in said Loan Association to file their claim, with proof thereof, with him within thirty (30) days from the first publication of such notice, and that he send by mail to each of the stockholders of said Loan Association a copy of such notice. 381

IT IS FURTHER ORDERED that the said Standing Master report on the priorities or equities of all persons claiming to be interested in the property of the said Loan Association and the order in which same are to be paid out of the assets of the said Loan Association.

382 IT IS FURTHER ORDERED that the Master report what are the rights of said Loan Association in any assets now in the hands of persons not parties to this suit and whether or not same can be recovered from the parties to whom they were transferred.

IT IS FURTHER ORDERED that the Master ascertain and report what sum of money or other assets of the said Loan Association were unlawfully used by any officer or agent of either the Loan Association or Trust Company, and whether same or any part thereof can be recovered from said parties or their transferees.

383

IT IS FURTHER ORDERED that the demurrers to the petitions now on file seeking intervention, be and the same are over-ruled and that the petitioning parties mentioned in the petition of July 15th, 1913, be allowed to intervene in this cause and present their claims to the Master for adjudication in accordance with this decree.

IT IS FURTHER ORDERED that Sims Ely, the receiver in this cause, be appointed general receiver herein, with all proper powers and that he hold all of the assets and property now in his hands belonging to either of said corporations until the
384 further order of this Court.

All other questions are reserved until the coming in of the report of the Master.

DONE IN OPEN COURT this 12th day of March,
A. D. 1914.

WM. H. SAWTELLE,
Judge.